

I

INDIANA

E

EMERGENCY

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RESPONSE

C

COMMISSION

HANDBOOK

IERC HANDBOOK
COMMENTS / REQUEST FOR CLARIFICATION FORM

www.in.gov/dhs/files/clarificaion_request_and_comment_form-handbook.pdf

The information in this handbook is intended to provide collaboration, communication and cooperation among LEPCs, the IERC and the public while implementing the statutory requirements of EPCRA.

Please use this form to offer comments and suggestions and to request clarification for any part of this handbook. The IERC will review all comments/requests and provide timely responses. All comments/ suggestions adopted by the IERC will be included in the **annual** update/publication of the handbook.

Use this form to provide all comments, suggestions and clarification requests. Send the form by mail or email to the attention of the IERC Representative at the address or email address posted on page 1.

County: _____ Date: _____

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☐ Editorial changes: _____

☐ Suggestions: _____

☐ Additional Comments: _____

Clarification Requested: _____

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TABLE OF CONTENTS

INTRODUCTION—IERC Members and Committees

www.in.gov/dhs/2521.htm

<u>DESCRIPTION</u>	<u>PAGE</u>
ACRONYMS	6
IERC BYLAWS	7
SECTION 1—REQUIREMENTS	
1.0 IERC Performance Issues	13
1.1 IERC Policies	14
1.2 Policy Committee	15
1.3 LEPC Bylaws Template	
Table of Contents	19
Bylaws of Local County Emergency Planning Committee	20
1.4 LEPC Legal Notice Model	
Public Notice	24
1.5 Fiscal Report	25
1.6 Access to Public Records	26
1.7 Payments to LEPC Members	27
1.8 Membership Policies	28
1.9 Nine Planning Elements	29
LEPC Plan Writing Checklist	32
1.10 LEPC and EMA Plans	38
1.11 LEPC Interface with IDHS	40
1.12 Procedure for Request and Appropriation of LEPC Funds	47

<u>DESCRIPTION</u>	<u>PAGE</u>
1.13 LEPC Plan Exercise Policy	49
Indiana LEPC Exercise Proposal Notification Form	www.in.gov/dhs/files/exerciseprop.pdf
SARA Title III Actual Incident/Exercise Report and Request for LEPC Plan Exercise Credit Form	www.in.gov/dhs/files/exercisecredit.pdf
1.14 LEPC Training Resource Guide Requirements	50
1.15 Community Emergency Response Training	51
Appendix A—Sample information for county/district emergency responders	52
Appendix B—Approved Training Topics	53
Appendix C—Approved Planning Topics	54

SECTION 2—LAWS

2.1 Open Door Law/Public Records Act (IC 5-14-1.5 and IC 5-14-3)	www.in.gov/pac/2328.htm
2.2 Ethics Laws- Indiana Code of Ethics (IC 4-2-6 and 42 IAC)	www.in.gov/legislative/iac/
2.3 Establishment & Composition of IERC (IC 13-25-1)	www.in.gov/legislative/ic/code/title13/ar25/ch1.html
Indiana Emergency Response Commission	
2.4 Indiana’s Hazardous Materials Law (IC 13-25-2 & 3)	
Chapter 2—Emergency Planning and Notification	www.in.gov/legislative/ic/code/title13/ar25/ch2.pdf
Chapter 3—Responsible Property Transfer law	www.in.gov/legislative/ic/code/title13/ar25/ch3.pdf
2.5 SARA Title III (42 USC §§11001-11050)	
	www.access.gpo.gov/uscode/title42/chapter116_subchapteri_.html
	www.access.gpo.gov/nara/cfr/waisidx_01/40cfrv24_01.html
Emergency Planning and Community Right-to-Know Act of 1986 (40 CFR Part 350, 355, 370, 372)	
Subchapter I—Emergency Planning and Notification (40 CFR 355)	
Subchapter II—Reporting Requirements	
Subchapter III—General Provisions	
42 USC Part 370—Hazardous Chemical Reporting: Community Right-to-Know (40 CFR 370)	
40 CFR 350—Trade Secrecy Claims: EPCRA Information	
40 CFR 372—Toxic Chemical Release Reporting	
2.6 LEPC Funds Distribution & Use (IC 6-6-10)	
Article 6—Local Emergency Planning and Right-to-Know Fund	
	www.in.gov/legislative/ic/code/title6/ar6/ch10.pdf

DESCRIPTION**PAGE****2.7 Immunity for Oil Discharge Response Assistance (IC 13-24-2-1)**

Chapter 2—Immunity for Oil Discharge Response Assistance

www.ai.org/legislative/ic/code/title4/ar13/ch2.pdf**2.8 Prohibition Against Purchase Of Insurance (IC 4-13-1-17 and IC 34-13-3-20)**

Indiana Code 4-13-1-17—Insurance; Loss or Damage to Property

www.ai.org/legislative/ic/code/title4/ar13/ch1.pdf

Indiana Code 34-13-3-20—Liability Insurance; Prohibitions

www.ai.org/legislative/ic/code/title4/ar13/ch3.pdf**SECTION 3—ATTORNEY GENERAL OPINIONS**

3.1	Liability of LEPC Members	58
3.2	Combining LEPCs and EMACs	66
3.3	Open Door Law Requirements	70
3.4	Appointment and Removal of LEPC Members	75
3.5	Service on More than One LEPC	78
3.6	Diversion of LEPC Funds or Equipment	84
3.7	Representation of LEPCs by Attorney General	88

SECTION 4—DOCUMENTS, FORMS AND TEMPLATE LETTERS

4.1	Tier 2 and Facility Reporting Packet	www.tier2.in.gov or www.in.gov/idem/5285.htm
4.2	HC-500 Hazardous Chemical Inventory Return	www.in.gov/dor/files/hc500.pdf
4.3	Fiscal Report Fiscal Report LEPCs	www.in.gov/dhs/files/08fiscal.pdf
4.4	Roster Submission Local Emergency Planning Committee Roster	www.in.gov/dhs/files/roster_.pdf

DESCRIPTION

4.5	LEPC Exercise Forms	
	Indiana LEPC Exercise Proposal Notification Form	www.in.gov/dhs/files/exerciseprop.pdf
	SARA Title III Actual Incident/Exercise Report and Request for LEPC Plan Exercise Credit Form	www.in.gov/dhs/files/exercisecredit.pdf
4.6	IERC Forms, Document, Template Letters	
	a. LEPC Letter to County Officials	91
	b. LEPC Planning Information Request to Facilities	93
	c. IERC Planning Information Compliance Letter to Facilities	95
	d. LEPC Compliance Letter to Facilities	96
	e. IERC Compliance Letter to Facilities	98
4.7	Conflict of Interest Disclosure	www.in.gov/sboa/files/Form236.pdf
	Uniform Conflict of Interest Disclosure Statement	99
4.8	Hazmat Equipment Grant Agreement	
	Model Agreement	101
4.9	Other Equipment Agreement	
	Hazardous Material Response Equipment Information Document	103
	IERC HANDBOOK—COMMENT / REQUEST FOR CLARIFICATION	104

ACRONYMS

CAS	Chemical Abstract Service
CAMEO	Computer Aided Management of Emergency Operations
CEC	Community Emergency Coordinator
CFR	Code of Federal Register
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EHS	Extremely Hazardous Substance
EMA	Emergency Management Agency
EMAC	Emergency Management Advisory Council
EOP	Emergency Operations Plan
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
FDA	Food and Drug Administration
FEC	Facility Emergency Coordinator
FID	Facility Identification Number
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
HAZMAT	Hazardous Material
IC	Indiana Code
IDEM	Indiana Department of Environmental Management
IDHS	Indiana Department of Homeland Security
IERC	Indiana Emergency Response Commission
LEPC	Local Emergency Planning Committee
MSDS	Material Safety Data Sheet
NRC	National Response Center
NRT	National Response Team
OSHA	Occupational Safety and Health Administration
RCRA	Resource Conservation and Recovery Act
RQ	Reportable Quantity
SARA	Superfund Amendment and Reauthorization Act
SEMA	State Emergency Management Agency State
SIC	Standard Industrial Classification
SERC	State Emergency Response Commission
TPQ	Threshold Planning Quantity
USC	United States Code
USEPA	United States Environmental Protection Agency

IERC Bylaws

www.in.gov/dhs/files/IERC_Bylaws.pdf

Table of Contents

ARTICLE I—Identification

ARTICLE II—Commission Members

ARTICLE III—Commission Meetings

Section 1: Frequency of Meetings

Section 2: Announcement of Meetings

Section 3: Location of Meetings

Section 4: Quorum of Members for Meetings

Section 5: Conduct of Meetings

ARTICLE IV—Commission Committees

Section 1: Identification of Committees and Appointments/ Resignation

Section 2: Dissolution and Establishment of Committees

Section 3: Duties of Committees

ARTICLE V—Officers

Section 1: Officers

Section 2: Terms of Officers

ARTICLE VI—Powers and Duties of Officers

Section 1: Meeting Frequency, Dates, Times And Locations

Section 2: Committee Appointments

Section 3: Commission, Meetings' Conduct

Section 4: Delegation of Authority

ARTICLE VII—Title III Document Submissions

Section 1: Repository of Documents

Section 2: Availability of Documents to the Public

Section 3: Commission Records

ARTICLE VIII—Local Emergency Planning Committee Coordination

Section 1: Appointment of LEPC Members

Section 2: Coordination and Supervision of LEPCs

ARTICLE IX—Adoption/Amendment of Commission Bylaws

Section 1: Adoption of Bylaws

Section 2: Amendment of Bylaws

ARTICLE X—Non-Exclusion Provision

ARTICLE XI—Bylaws Adoption and Signing

ARTICLE I—Identification

The Indiana Emergency Response Commission, hereinafter referred to as the “Commission”, is a state entity created pursuant to SARA Title III, the Emergency Planning and Community Right-to-Know Act of 1986. The Commission has been created by Governor Evan Bayh’s Executive Order Number 89-13, and has had statutory authority conferred by Senate Bill 392 of the Indiana Legislature, signed into law by Governor Bayh. The primary purpose of the Commission is to implement SARA Title III in Indiana, but its broader purpose is to enhance environmental protection and public health and safety as these are affected by chemical hazards in Indiana.

ARTICLE II—Commission Members

The Commission consists of thirteen (13) members appointed by the Governor of Indiana, and includes the Commissioner of the Indiana Department of Environmental Management (IDEM), the Executive Director of the Indiana Department of Homeland Security (IDHS), the Superintendent of the Indiana State Police (ISP), the State Fire Marshal (SFM), three (3) representatives of business and industry, three (3) representatives of the public, and three (3) representatives of local government. The state agency heads may name designees. All members of the Commission serve at the pleasure of the Governor.

ARTICLE III—Commission Meetings

Section 1: Frequency of Meetings

The Commission will meet at least quarterly, and more frequently at the discretion of its Chair.

Section 2: Announcement of Meetings

- (a) Members of the Commission will be notified at each Commission meeting of the next meeting time, place, and date, and will be notified in writing two weeks in advance of such meetings of the next meeting’s agenda, time, place and date.
- (b) The public will be notified of Commission meetings by notices issued by the Indiana Department of Environmental Management’s Office of External Affairs and by the Indiana Department of Homeland Security’s, Public Affairs Office, in the manner prescribed by law.

Section 3: Location of Meetings

The Commission meetings will be held in the Indiana Government Center’s Conference Center, 402 West Washington Street, Indianapolis, Indiana, or as otherwise determined by the Chair.

Section 4: Quorum of Members for Meetings

A quorum of Commission members is required for the conduct of business and consists of the presence of a majority of its members.

Section 5: Conduct of Meetings

- (a) Commission meetings will be conducted according to Robert’s Rules of Order, and Commission business according to the provisions of the Indiana Open Door Law, the Indiana Public Records Law, and the Indiana Administrative Orders and Procedures Act.

- (b) Any matter to be voted on will take the form of a resolution or motion. A simple majority of the members in attendance at a commission meeting must vote affirmatively, for the adoption of any resolution.
- (c) Each Commission member, including the Chair and Vice-Chair, will have one vote, as will state agency head designees in the absence of those agency heads.
- (d) A Commission member may vote for or against a resolution, or may abstain from voting.

ARTICLE IV—Commission Committees

Section 1: Identification of Committees and Appointments/ Resignation

- (a) The Commissions' Committees are six (6) in number and are the Policy, Technical, Fiscal, Training, and Communications Committees.
- (b) Appointments to Committees, including Committee Chairs, are made by the Chair of the Commission.
- (c) Chairs of Committees are to be Commission members or designees of Commission members designated by the Commission Chair.
- (d) Resignations of Committee members are to be submitted in writing to the Chair, who will, replace resigning members.

Section 2: Dissolution and Establishment of Committees

Additional Committees may be established and existing ones dissolved by a majority vote of the Commission.

Section 3: Duties of Committees

- (a) Committees will convene to consider issues assigned by the Commission and/or issues of the Committee's devising.
- (b) Committee meetings will be held at the discretion of Committee Chairs in terms of frequency and location.
- (c) Committee Chairs will publicize and conduct their meetings in the manner prescribed by the Open Door Law.
- (d) Committees will report their findings and make their recommendations to the full Commission.
- (e) Committee recommendations must, to be adopted, be affirmed as resolutions by a majority of the Commission members.
- (f) Additional duties may be assigned to Committees by the Commission Chair.

ARTICLE V—Officers

Section 1: Officers

The Officers of the Commission are the Chair, and the Vice-Chair, who are appointed by the Governor.

Section 2: Terms of Officers

The Chair and Vice-Chair serve at the pleasure of the Governor.

ARTICLE VI—Powers and Duties of Officers

Section 1: Meeting Frequency, Dates, Times, And Locations

The Chair determine the frequency, dates, times, and locations of Commission meetings.

Section 2: Committee Appointments

The Chair appoints the Chairs and members of each Committee.

Section 3: Commission, Meetings' Conduct

- (a) The Chair conducts Commission meetings according to Robert's Rules of Order.
- (b) Commission meeting agendas are set by the Chair.
- (c) The minutes of Commission meetings will be reviewed by the Chair between meetings and distributed to Commission members in draft form prior to the next Commission meeting, at which time the minutes will be approved as submitted or as modified by the Commission.

Section 4: Delegation of Authority

- (a) In the absence of the Chair, Commission meetings will be conducted by the Vice-Chair.
- (b) The Chair of the Commission may delegate in writing at his discretion his powers and duties consistent with other provisions of the bylaws.
- (c) Each state agency head on the Commission will provide in writing a single designee with full voting rights, to represent such agency head in his/her absence from Commission meetings.

ARTICLE VII—Title III Document Submissions

Section 1: Repository of Documents

The Indiana Department of Homeland Security (IDHS), 302 West Washington Street, Room E208, Indianapolis, Indiana will be the repository for all documents submitted to the Commission pursuant to the provisions of federal or state law.

Section 2: Availability of Documents to the Public

Public records will be available for examination by the public during the hours of 8:30 am and 4:30, Monday through Friday.

Section 3: Commission Records

All records of Commission meetings, including meeting agendas and minutes will be available for inspection and copying by any person at 302 West Washington Street, Room E208, Indianapolis, Indiana 46204.

ARTICLE VIII—Local Emergency Planning Committee Coordination

Section 1: Appointment of LEPC Members

- (a) The Commission will vote at each of its meetings on submitted nominees for LEPC membership.

- (b) A provisional appointment letter signed by the Chair of the Commission will be issued to LEPC Chairs who have submitted the names of nominees, for membership on their LEPCs, between regular commission meetings.
- (c) A determinative letter of appointment signed by the Chair will be issued to submitting LEPC Chairs, after Commission member approval, at a regular commission meeting.
- (d) Written petitions for addition or removal of LEPC members by the Commission will be accepted by the Chair and considered at the next regularly scheduled Commission meeting; petitioners also may present oral arguments supporting their petition at the same Commission meeting.

Section 2: Coordination and Supervision of LEPCs

- (a) The Commission will coordinate and supervise the conduct of LEPCs by issuing policy and performance guidelines to LEPCs and by monitoring the LEPCs' performance of their SARA Title III duties pursuant to that guidance.
- (b) The Commission will impose sanctions it deems appropriate in the event of LEPC non-compliance, such sanctions being determined by majority vote of the Commission.

ARTICLE IX—Adoption/Amendment of Commission Bylaws

Section 1: Adoption of Bylaws

A majority of Commission members is required to adopt the Commission's Bylaws.

Section 2: Amendment of Bylaws

A majority of commission members is required to amend the Commission's Bylaws.

ARTICLE X—Non-Exclusion Provision

Nothing in these bylaws is to be construed as excluding or contravening any additional provisions of federal or state law that are not explicitly or implicitly referred to within these bylaws.

ARTICLE XI—Bylaws Adoption and Signing

Upon their adoption by the Commission, a copy of these bylaws will be signed and dated by the Chair and the Vice-Chair of the Commission and will be available for inspection by the public at 302 W. Washington Street, Room E208, Indianapolis, Indiana.

SECTION 1

REQUIREMENTS

1.0 IERC Performance Issues

1. Responsibilities of IERC:

- A. “The [Indiana] Emergency Response Commission [IERC] shall appoint local emergency planning committees under subsection (c), and shall supervise and coordinate the activities of such committees. The [IERC] shall establish procedures for receiving and processing requests from the public for information under Section 324, including Tier Two information under Section 312. Such procedures shall include the designation of an official to serve as coordinator for information.” [EPCRA Section 301 (a)]
- B. “A [Indiana] Emergency Response Commission may revise its designees and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the [IERC] to modify the membership of a local emergency planning committee.” [EPCRA Section 301 (d)]

2. Responsibilities of LEPC:

- A. Each committee shall include at a minimum, representatives from each of the following groups or organizations: elected state and local officials; law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle.” [Section 301 (c)]
- B. Such committee shall appoint a chair person and shall establish rules by which the committee shall function.” [Section 301 (c)]
- C. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. [Section 301 (c)]
- D. The local emergency planning committee shall establish procedures for receiving and processing requests from the public under Section 324, including Tier Two information under Section 312. Such procedures shall include the designation of an official to serve as coordinator for information.” [Section 302 (c)]

1.1 IERC POLICIES

IERC Performance Issues

- A. Frequency and Location of Meetings: The commission must meet as follows:
- (1) At least one (1) time every three (3) months.
 - (2) At the call of the chairman.
- Special meetings of committees or other sub-groups of the IERC may be held in various locations around the state and in compliance with Open Door requirements.
- B. Commission Designee: To ensure administrative continuity, those Commissioners permitted to name designees must appoint in writing particular designees to attend Commission meetings in their absence and must authorize those designees to vote on issues before the Commission.
- C. Quorum: A majority of the Commission members constitutes a quorum for the authority to conduct business.
- D. Committees: The Committees established by the IERC must meet on a basis established by the Committee chairs, and must report their findings and make their recommendations to the IERC for approval at its regular meetings; mileage and expenses incurred by Committee members in attending meetings must be reimbursed from the IERC funds; reimbursement must be in accordance with State guidelines.
- E. Tier Form Submission: The IERC recommends that LEPCs require the Tier Two form to satisfy Section 312 of Title III. For copies of the form go to www.tier2.in.gov or www.in.gov/idem/5285.htm
- F. MSDS Submission: The IERC recommends that facilities submit lists of, rather than individual MSDS for, reportable chemicals. For copies of the form go to www.tier2.in.gov or www.in.gov/idem/5285.htm

1.2 POLICY COMMITTEE

LEPC Issues

- A. Frequency of Meetings: Each Committee must meet at least two (2) times, on separate days, every six (6) months.
- B. Roster Submissions: Each Committee must submit a roster to the IERC at least annually by March 1; the roster format provided by the IERC must reflect the categories of membership required by SARA Title III, Section 301(c). Go to www.in.gov/dhs/files/roster.pdf for a blank copy of the roster.
- C. Submission of Annual Financial Report: Each Committee must submit by registered mail to the IERC a report of expenditures annually by March 1; the IERC must provide to each Committee a report form to satisfy the requirements of IC 6-6-10. Go to www.in.gov/dhs/files/08fiscal.pdf for a blank copy of the fiscal report.
- D. Adoption of Procedural Rules: Each Committee must adopt written rules of procedure, a copy of which must be submitted to the IERC, to satisfy the requirements of SARA Title III, Section 301(c) [42 U.S.C 11000]. www.dem.dcc.state.nc.us/SERC/SARA-TITLE-III.PDF
- E. Annual Publication of Legal Notice: Each Committee must publish at least annually a legal notice, in its emergency planning district, setting out Committee meeting times and places, and the location of the Committee's emergency plan, Tier forms, MSDS sheets, and written follow-up notices by facilities experiencing accidental SARA Title III chemical releases. A copy of such notice is to be furnished to the IERC by, January 31 annually. [42 U.S.C 11044(b)]. www.dem.dcc.state.nc.us/SERC/SARA-TITLE-III.PDF

- F. Plans Submission: Each Committee must submit annually to the IERC, by December 31st, its emergency plan update for accidental Title III chemical releases; such plan should be an annex to the county emergency operations plan.
www.in.gov/dhs/files/LEPC_plan_evaluation_checklist.pdf (plan evaluation checklist)
- G. Plans Exercising: Each Committee must exercise its Title III emergency plan at least once annually, such exercise may be a table-top, functional, or full-scale field exercise, but must satisfy the requirements listed in the Exercise Report forms approved by the Training, Committee. (See Section 2.9 herein) or go to www.in.gov/dhs/files/exerciseprop.pdf and www.in.gov/dhs/files/exercisecredit.pdf for copies of these forms.
- H. Compliance/Outreach: Each Committee should institute a compliance/outreach effort to identify and bring into compliance facilities which are subject to, but not reporting under, SARA Title III.
- I. Risk Communication: Each Committee should institute a risk communication program to inform the public of the health, safety, and environmental risks posed both by chemicals transported and at fixed facilities in the community.
- J. Record Retention: **Under Construction**
- K. Public Official Education: Committees should inform local officials of the Committee's responsibilities under Title III, and solicit the participation of local officials in the execution of the Committee's duties.
- L. Inter-County Planning: Committees should work with the Committees in surrounding counties to coordinate emergency planning and response. Additionally, emergency planning districts shall be combined in accordance with the following guidelines:
1. The IERC must first approach the Chairman of the inactive LEPC and ask if they would object to being combined with another LEPC. If no definitive answer results from contacting the LEPC

Chair, further contact must be made with the County Emergency Management Director and the Chairman of the County Commission.

2. Prior to combining counties, the IERC must identify one or more viable LEPCs contiguous with the inactive LEPC and approach a viable LEPC about assimilating the county of the inactive LEPC.
3. In no event shall counties be combined if the viable LEPC objects to taking over the responsibilities of the inactive LEPC.
4. A viable LEPC may assimilate more than one inactive contiguous LEPC so long as the viable LEPC can fulfill the requirements for the newly created planning district.
5. Funds, including withheld funds from inactive LEPC's, must be transferred to the viable LEPC in annual payments to be approved on a case by case basis by the IERC.
6. If representatives of an inactive LEPC object to assimilation, the IERC must give the inactive LEPC 90 days within which to achieve compliance with at least 6 at the requirements of IC 6-6-10-9 for the current calendar year. Inactive LEPCs may seek reconsideration of the IERC's proposed combination of planning districts after submitting a plan containing a compliance schedule within 90 days of the IERC's notice of intent to combine the district.
7. The IERC remains free to dissolve combined emergency planning districts upon a showing that the former inactive LEPC has been replaced by a newly organized viable LEPC for the district which was assimilated.
8. The IERC must consider, among other things, the following issues prior to combination of planning districts:
 - a) the number of EHS facilities in all the districts involved;
 - b) the demonstrated abilities of the viable LEPC;
 - c) the recommendations of IERC staff including field support personnel; and
 - d) unique circumstances of the inactive LEPC.

9. Notwithstanding all of the above guidelines, the IERC reserves the power as granted by IC 13-25-1-6(a) (3), to design and supervise emergency planning districts.

M. Donations to LEPCs:

Committees should keep donations from any source other than the IERC in a separate account from that with state-provided funds; any funds combined with state funds become subject to state spending guidelines as provided by law.

N. LEPC Telephone Numbers:

Each Committee must provide to the IERC and to Title III facilities in its emergency planning district a 24-hour emergency number for reporting Title III releases, and an administrative telephone number for routine calls.

O. Bylaws:

Committees must adopt bylaws and update the document annually by December 31

Table of Contents

ARTICLE I—Identification

ARTICLE II—Committee Members

Section 1: Organizations Represented

Section 2: Membership Applications

ARTICLE III—Committee Meetings

Section 1: Frequency of Meetings

Section 2: Announcement of Meetings

Section 3: Location of Meetings

Section 4: Quorum of Members for Meetings

Section 5: Conduct of Meetings

ARTICLE IV—Committee Sub-committees

Section 1: Identification of Sub-Committees and Appointments/Resignations

Section 2: Dissolution and Establishment of Sub-Committees

Section 3: Duties of Sub-Committees

ARTICLE V—Officers

Section 1: Officers

Section 2: Terms of Officers

Section 3: Election of Officers

ARTICLE VI—Powers and Duties of Officers

Section 1: Meeting Frequency, Dates, Times and Locations

Section 2: Sub-Committee Appointments

Section 3: Committee Meetings' Conduct

Section 4: Delegation of Authority

Section 5: Meeting Minutes and Fiscal Records

ARTICLE VII—Title III SARA Title III Document Submissions

Section 1: Repository of Documents

Section 2: Availability of Documents to the Public

Section 3: Committee Records

Section 4: Legal Notices

ARTICLE VIII—Adoption/Amendment of Committee Bylaws

Section 1: Adoption of Bylaws

Section 2: Amendment of Bylaws

ARTICLE IX—Non-Exclusion Provision

ARTICLE X—Bylaws Adoption and Signing

ARTICLE I—Identification

The _____ County Emergency Planning Committee, hereinafter referred to as the “Committee,” is a state entity created pursuant to SARA Title III, the Emergency Planning and Community Right-to-Know Act of 1986. The committee has been appointed by the Indiana Emergency Response commission as a special State Appointee. The primary purpose of the Committee is to implement SARA Title III in Indiana, but its broader purpose is to enhance environmental protection and public health and safety as these are affected by chemical hazards in _____ County.

ARTICLE II—Committee Members

Section 1: Organizations Represented

The Committee consists of members selected under the provisions of these Bylaws and appointed by the Indiana Emergency Response Commission (IERC), and includes representatives from the following: local and state government, law enforcement, emergency management, fire fighting, emergency medical services, health, hospital, environmental, transportation, media, industry and community groups.

Section 2: Membership Applications

Membership on the Committee is open to any interested person who meets the criteria established by the IERC for membership in the roster category in question. The names of the qualifying applicants will be forwarded to the IERC for provisional appointment until the next IERC meeting. Applicants whom the Chair informs do not meet the IERC’s criteria, will be informed of the procedure for petitioning the IERC to appeal the Chair’s determination.

ARTICLE III—Committee Meetings

Section 1: Frequency of Meetings

The Committee will meet at least two (2) times, on separate days, every six (6) months, and more frequently at the discretion of its Chair.

Section 2: Announcement of Meetings

- (a) Members of the Committee shall be notified at each Committee meeting of the next meeting time, place, and date, and shall be notified in writing two weeks in advance of such meetings of the next meeting, agenda, time, place and date.
- (b) The public will be notified of Committee meetings at least two (2) business days in advance of each meeting.

Section 3: Location of Meetings

The Committee meetings will be held _____, Indiana, or as otherwise determined by the Chair.

Section 4: Quorum of Members for Meetings

A quorum of Committee members is required for the conduct of business, and consists of the presence of a majority of members.

Section 5: Conduct of Meetings

- (a) Committee meetings will be conducted according to Robert's Rules of Order, and in accordance with the provisions of the Indiana Open Door Law, the Indiana Public Records Law, and the Indiana Administrative Order and Procedures Act.
- (b) Any matter to be voted on shall take the form of a resolution or motion. A simple majority of the members in attendance at a Committee meeting must vote affirmatively for adoption of any resolution.
- (c) Each Committee member, including the chair will have one vote.
- (d) A Committee member may vote for or against a resolution, or may abstain from voting.

ARTICLE IV—Committee Sub-Committees

Section 1: Identification of Committees and Appointments/Resignations

- (a) The Sub-Committees are four (4) in number and are the Planning, Fiscal, Communications, and Training Sub-Committees.
- (b) Appointments to Sub-Committees, including Sub-Committee Chairs, are made by the Chair of the Committee.
- (c) Resignations of Sub-Committee members are to be submitted in writing to the Chair, who may, at his/her discretion, replace resigning members.

Section 2: Dissolution and Establishment of Sub-Committees

Additional Sub-Committees may be established and existing ones dissolved by a majority vote of the Committee.

Section 3: Duties of Sub-Committees

- (a) Sub-Committees will convene to consider issues assigned by the Committee and/or issues of the Sub-committee's devising.
- (b) Sub-Committee meetings will be held at the discretion of Sub-Committee Chairs in terms of frequency and location. Such meetings shall comply with the Indiana Open Door law.
- (c) Sub-Committees will report their findings and make their recommendations to the full Committee.
- (d) Sub-Committee recommendations must, to be adopted, be affirmed as resolutions by a majority of the Committee members.
- (e) Additional duties may be assigned Sub-Committees by the Committee Chair.

Article V—Officers

Section 1: Officers

The Officers of the Committee are the Chair, Vice-Chair, Secretary and Treasurer.

Section 2: Terms of Officers

The Terms of the Officers are for a period of one year.

Section 3: Election of Officers

Annual election of Officers will be effected by a majority vote of all Committee members appointed by the IERC.

ARTICLE VI—Powers and Duties of Officers

Section 1: Meeting Frequency, Dates, Times and Locations

The Chair will determine the frequency, dates, times and locations of Committee meetings. Such meetings shall comply with the Indiana Open Door law.

Section 2: Sub-Committee Appointments

The Committee Chair shall appoint the Chair and members of each Sub-Committee.

Section 3: Committee Meetings' Conduct

- (a) The Chair will conduct Committee meetings according to Robert's Rules of Order.
- (b) Committee meeting agendas will be set by the Chair.

Section 4: Delegation of Authority

The Chair of the Committee may delegate at his/her discretion his/her powers and duties to the Vice-Chair, consistent with other provisions of the bylaws.

Section 5: Meeting Minutes and Fiscal Records

The Secretary/Treasurer shall keep Committee meeting minutes and a record of the finances of the Committee.

ARTICLE VII—Title III Document Submissions

Section 1: Repository of Documents

The _____, Indiana will be the repository for all documents submitted to the Committee pursuant to the provisions of SARA Title III and the Indiana Access to Public Records law.

Section 2: Availability of Documents to the Public

Title III documents will be available for examination and copying by the public during the hours of 8:15 am and 4:45 pm, Monday through Friday, at _____, Indiana. The Committee shall comply with the Indiana Access to Public Records law, including provisions relating to confidential records.

Section 3: Committee Records

All records of Committee meetings, including meeting agendas and minutes, shall be available for inspection and copying any person at _____, Indiana.

Section 4: Legal Notices

The Committee annually shall publish annually a legal notice indicating where all Title III documents are maintained, including the Committee's emergency plan, MSDS, Tier forms, and written follow-up notices from facilities experiencing Title III spills.

ARTICLE VIII—Adoption/Amendment of Committee Bylaws

Section 1: Adoption of Bylaws

A majority of Committee members is required to adopt the Committee's Bylaws

Section 2: Amendment of Bylaws

A majority of Committee members is required to amend the Committee's bylaws.

ARTICLE IX—Non-Exclusion Provision

Nothing in these bylaws is to be construed as excluding or contravening any additional provision of federal or state law which are not explicitly or implicitly referred to within these bylaws.

ARTICLE X—Bylaws Adoption and Signing

Upon their adoption by the Committee, a copy of these bylaws will be signed and dated by the Chair of the Committee and will be available for inspection and copying by the public at _____, Indiana.

Approved and adopted by majority vote in a public meeting held this _____ the day of _____, _____.

_____, Chairman

1.4 LEPC Legal Notice Template (Public Notice)

www.in.gov/dhs/files/LEPC_Legal_Notice_Template.pdf

The _____ County Emergency Planning Committee will hold its meetings for the year _____ at _____ PM at _____ on the following dates: _____, _____, _____, and _____ and at such other times as shall be duly authorized by act of the Committee or its Chairman. All interested parties are encouraged to attend.

The _____ County Emergency Plan for Hazardous Materials Incidents may be reviewed during regular business hours at the office of _____, _____, IN. All information filed by covered SARA Title III facilities in _____ County may be reviewed during regular business hours at the offices of the _____, _____, IN. Copies of documents may be obtained at these offices, and the Committee may charge a fee for copying. For further information on these matters, please contact _____, Chairman, at (XXX) XXX-XXXX.

1.5 **Fiscal Report**

TO: All LEPC Chairs

FROM: IERC Fiscal Committee Chair

SUBJECT: LEPC Annual Fiscal Report

As you know, the Indiana LEPC funding law (IC-6-6-10) requires that each LEPC submit annually to the Indiana Response Commission (IERC) a fiscal report accounting for the LEPC's expenditures in the preceding year.

A copy of the fiscal reporting form for can be obtained by visiting www.in.gov/dhs/files/08fiscal.pdf to report the LEPC's annual expenditure.

The IERC asks that you include with your fiscal report, a copy of your County Auditor's computer printout, showing the details of your LEPC's fiscal activity. The printout will assist you in preparing the IERC's form, and will also provide additional information to the IERC regarding LEPC funding needs.

The fiscal reports are due by the end of **March 1 of each year**, and should be sent via email or by mail to the following address:

Indiana Emergency Response Commission
Fiscal Committee Chair
302 West Washington Street, Room E-208
Indianapolis, IN 46204-2760

Thank you for your cooperation.

1.6 Access to Public Records

TO: Local Emergency Planning Committee (LEPC) Chairs

FROM: Indiana Emergency Response Commission (IERC) Chair

SUBJECT: Indiana Open Door Law and Access to Public Records Act

The Indiana Open Door Law was enacted by the Indiana General Assembly in 1977 to ensure that the conducting of government business by the state of Indiana and its political subdivisions be a process that occurs openly and publicly, with opportunity for members of the public to observe and record that process. As state agencies, the IERC and Indiana's LEPCs are subject to the provisions of the Open Door Law and of Indiana's Access to Public Records Act, passed in 1983. See IC 5-14-1.5 and IC 5-14-3 at www.in.gov/pac/2328.htm

The Access to Public Records Act, IC 5-14-3: The primary provisions of this state statute which apply frequently to the IERC and LEPCs are those which specify when public records can be assessed by the public, how public records can be access by the public, and what charges, relative to the provision of documents, are allowable.

As state agencies, the IERC and Indiana's LEPCs must comply with all the applicable provisions of these two important state laws designed to ensure and enhance citizen participation in the conduct of government.

Please read these statutes carefully, and make sure that your LEPC is in compliance with their provisions. If you have any questions about the laws, please let us know.

Thank you for your cooperation.

1.7 Payments to LEPC Members

TO: Local Emergency Planning Committee (LEPC) Members

FROM: Indiana Emergency Response Commission (IERC) Chair

RE: Payments to Local Emergency Planning Committee Members

I am writing to give you guidance on payments to LEPC members. This information is based on the position taken by the Indiana Ethics Commission.

- (1) First, I want to share guidelines with regard to LEPCs hiring and paying their members for services or purchasing goods from LEPC members. This is proper as long as the correct procedures are followed.

The LEPC member involved must recuse him/herself from consideration of the matter when the possible payment is discussed by the LEPC. This means that the member must state, on the record, that he/she is not participating in either the discussion or the vote on whether to pay the member for goods or services. Further, the member must state on the record why he/she is not participating—for example, “I am not participating in the consideration of the contract to hire a person to perform the task of updating the plan, because I am being considered for employment for that task.”

It should be noted that the previous guidance from the IERC regarding employment of persons still stands. Persons may be employed to perform specific tasks, but may not be put on a payroll. Again, LEPCs need to examine the situation of persons employed for multiple tasks, since the IRS may regard them as full-time employees, even if they are not so regarded by the IERC.
- (2) The issue of payment of the twenty dollar (\$20.00) meeting stipend has arisen. The concern expressed has been conflict of interest and “ghost employment” when the payment goes to persons who are otherwise employed by local units of government, such as local Emergency Management Directors, who attend meetings during time when they are otherwise on duty. Such payments are not unethical from the state’s perspective. Any conflict of interest which may arise is at the local level, and should be addressed by local counsel, generally the county attorney.

Thank you for your consideration of these issues.

1.8 Membership Policies

TO: Local Emergency Planning Committee (LEPC) Chairs

FROM: Indiana Emergency Response Commission (IERC) Chair

Subject: IERC Adoption of LEPC Membership Policies

You should have received a copy of the advisory letter from the Indiana Attorney General regarding the quorum and other requirements of Indiana's Open Door Law which are applicable to Indiana's LEPCs, and a copy of the IERC Policy Committee's recommendations to the IERC regarding LEPC membership issues.

The IERC has voted unanimously to adopt its Policy Committee recommendations, in order to ensure that the IERC and all of Indiana's LEPCs are in full compliance with both federal and state law, and to encourage the maximum possible participation by local residents in the work of the LEPCs.

These policies have been adopted in the same spirit as have previous IERC policies, which is to give the greatest possible latitude to each LEPC in the conduct of their duties, within the framework of the law. The IERC is firmly committed to this principle of adopting only those policies and procedures which are required for legal or essential administrative reasons, conforming to the letter and the spirit of the laws mandating and regulating our activities.

If you have any questions or concerns about any of the new or about any previously adopted IERC policies, please let us know. We always welcome your input regarding the development of, and where necessary the modification of, the IERC's guidance and support of Indiana's LEPCs.

Thank you for your cooperation.

1.9 Nine Planning Elements

TO: Local Emergency Planning Committee (LEPC) Chairs

FROM: Indiana Emergency Response Commission (IERC) Technical Committee Chair

SUBJECT: Nine Planning Elements, Guidance for LEPC Plan Writing

As you may know, Indiana Code Title 10 provides that “Each political subdivision, which does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency, shall have an emergency management director designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.” [10-4-1-10(f)]

SARA Title III has specific planning and response requirements for dealing with accidents involving certain chemicals, but all of the Title III requirements permit their incorporation into your county’s all-hazard Emergency Operations Plan (EOP).

Moreover, the IERC sees a single, comprehensive, and integrated emergency planning document as providing for the most efficient and cost-effective response capability with which you can protect the persons, property, and environment in your emergency planning district

The Commission is, therefore, recommending that your SARA Title III chemical emergency plan be made an appendix in your EOP’s hazardous materials annex.

The Commission has retained in its entirety the same guidance that each LEPC has been given in the past, and that guidance consists of the nine planning elements that are required by law:

- (1) “Identification of facilities subject to the requirements of the subtitle (Title III) that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in Section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirement of this subtitle, such as hospitals or natural gas facilities.”

This means that your plan needs to include the names and address of (and preferably a map showing) all facilities in your county which store Threshold Planning Quantities (TPQs) of Extremely Hazardous Substances (EHS). It also means that you must identify and provide a map or list of roads and highways and railroads likely to be used for the transport of Extremely Hazardous Substances. Hospitals or other special facilities near EHS facilities

must also be identified in your plan because of special problems they present because of patient evacuation, additional fire hazard, and so forth.

- (2) Your plan needs to spell out “Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.”

This plan element refers only to methods and procedures to be employed outside the facility experiencing an accidental release of chemical, because the chemical has escaped the facility in question. Your plan’s description of these methods and procedures employed outside the facility needs to include accidental release notification of the LEPC by facilities, and exactly what roles are to be played by fire, police, emergency management, and ambulance personnel, and/or others.

- (3) Your plan must include “Designation of a Community Emergency Coordinator (CEC) and facility emergency coordinators (FECs), who shall make determinations necessary to implement the plan.”

This means that each facility with Extremely Hazardous Substances must designate to your LEPC an FEC (and alternates, to act in his absence) with his telephone number(s), and that the LEPC, in turn, must designate an individual or agency who is available 24 hours a day to receive notification of accidental releases.

- (4) Your plan needs to include “Procedures providing reliable, effective, and timely notification by the Facility Emergency Coordinators and the Community Emergency Coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of Section 304).

This means that your plan needs to describe a prearranged sequence of events of different agency actions to occur when a chemical release is reported to your CEC. This includes the event of providing the information about the release as cited in Section 304(b)(2).

- (5) Your plan must include a description of “Methods for determining the occurrence of a release, and the area of population likely to be affected by such release.”

This means that in the case of EHS facilities, technological or human detection systems and procedures must be described. It also means that methods for determining the impact on populations in the vicinity of EHS-releasing facilities must be indicated, based on considerations such as quantity of chemical released, wind speed and direction, distance from facilities of populations, and so forth.

- (6) Your plan must include “A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.”

This means describing a functional inventory including the names of the persons with the actual power to immediately release equipment for use. In the case of a facility's equipment, it is best to have on file a certification letter designating the person(s) authorized to release the equipment.

- (7) Your plan needs to describe "Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes."

This means that your plan must describe population protection steps that can be taken in response to an EPCRA chemical release including in-place sheltering and/or evacuation, and the rerouting of traffic away from airborne or ground surface releases.

- (8) Your plan must describe "Training programs, including schedules for training of local emergency response and medical personnel."

This means that your plan needs to identify specific training opportunities, to establish target dates by which the training will be taken, and to identify who will actually take them.

- (9) Finally, your plan must describe "Methods and schedules for exercising the emergency plan."

The methods may be a table top exercise, a functional exercise, or a full-scale exercise in the field, but must deal with a simulated release from an EHS facility. A target date for the exercise must be set, as well.

As you review your Title III plan for re-submission by the end of December of each year, please bear in mind the need to observe the provisions of OSHA's 1910.120, in order to utilize people in your response plan who have been trained appropriately.

Attached is the LEPC plan writing checklist document that will be used by the IERC Technical Committee to evaluate all LEPC hazardous materials plans. This document is based on NRT-1 and NRT-1a as well as federal and state statutes. Please use the document to assist you in developing and writing your LEPC plan.

www.in.gov/dhs/files/9-planning_elements_for_LEPC_plan_writing.pdf

If we can be of any other assistance in any way in your planning efforts, please let us know.

Element	LEPC Plan Writing Checklist Description/Expectation				
1	<p>State Law- "Identification of the following:</p> <p>(A) Facilities subject to this chapter that are within the emergency planning district.</p> <p>(B) Routes likely to be used for the transportation of substances on the list of extremely hazardous substances.</p> <p>(C) Additional facilities contributing to or subjected to additional risk due to the proximity of the facilities to facilities subject to this chapter, including hospitals or natural gas facilities." (IC 13-25-2-5(c)(1)(A-C))</p>				
<input checked="" type="checkbox"/>	Review Will Include The Following Items	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	Location in NRT-1
* <input type="checkbox"/> 1a	List the facilities subject to SARA Title III. Include facility addresses. Designate EHS or other status (i.e.. 302, 304, 311, 312, etc.) for each facility. <i>List the EHS chemicals at each facility (recommended).</i> This may be presented in table format.	13-25-2-5(c)(1)(A)	Sec11003(c)(1)	(1)	Page 21, 65
* <input type="checkbox"/> 1b	<i>Include a map showing locations of SARA Title III Facilities. Designate differences between EHS and other facilities, by legend (recommended).</i>			(1)	Page 43, 65
<input type="checkbox"/> 1c	Describe or list the common transportation routes for EHS materials in the county. (Include rail, roadway, waterway, pipeline)	13-25-2-5(c)(1)(B)	Sec11003(c)(1)	(1)	Page 21, 43
<input type="checkbox"/> 1d	<i>Include a map showing transportation routes for EHS materials (recommended).</i>			(1)	Page 43, 65
* <input type="checkbox"/> 1e	List the facilities contributing to or at greater risk due to proximity to SARA Title III facilities. (Schools, hospitals, nursing homes, areas of large group gathering i.e.. Arenas, Concert Halls, Shopping Malls, Churches, Convention Centers, etc.)	13-25-2-5(c)(1)(C)	Sec11003(c)(1)	(1)	Page 23, 43
* <input type="checkbox"/> 1f	<i>Include a map showing locations of facilities contributing to or at greater risk due to SARA Title III facilities.(Schools, hospitals, nursing homes, areas of large group gathering i.e.. Arenas, Concert Halls, Shopping Malls, Churches, Convention Centers, etc.)(recommended).</i>				Page 23, 43
<input type="checkbox"/> 1g	Include a vulnerability zone map for each facility. Use either CAMEO Screening and Scenario, or use the North American Emergency Response Guidebook (NA ERGB) evacuation distance for the EHS or CERCLA hazardous chemical with the greatest vulnerability zone at the facility.			(5)	Page 23, 43, 65

2

State Law - "Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of substances." (IC 13-25-2-5(c)(2))

<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
<input type="checkbox"/> 2a	Summarize the facility emergency response procedures or reference the location of the Facility Emergency Procedures. <i>Describe the facility's expectations of responding outside emergency response personnel (recommended).</i> This may be presented in table format.			(2)	Pages 28-30
<input type="checkbox"/> 2b	Include a flow diagram or a description of the notification process to the Community Emergency Coordinator (CEC).			(2)	Page 51
<input type="checkbox"/> 2c	Include or reference the location of general SOPs/SOGs to address determination and establishment of safety zones, decontamination procedures, Listing of guidance documents, personal protective actions, roles of responders, etc. (Every job being done must have a SOP/SOG)	13-25-2-5(c)(2)	Sec11003(c)(2)	(2)	Pages 44-45, 51, 55-56
<input type="checkbox"/> 2d	Include or reference the location of SOPs /SOGs for EMS, medical and Hospital personnel to address decontamination procedures, guidance documents, personal protective actions, roles, etc. (Every job being done must have a SOP/SOG.)	13-25-2-5(c)(2)	Sec11003(c)(2)	(2)	Pages 44-45, 51, 55

3

State Law - "Designation of a community emergency coordinator and facility emergency coordinators who shall make determinations necessary to implement the local emergency plan." (IC 13-25-2-5(c)(3))

<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
* <input type="checkbox"/> 3a	List the Community Emergency Coordinator (CEC) and how to contact. (This may be a specific person or a position within an agency, such as a 24 hour emergency dispatcher.)	13-25-2-5(c)(3)	Sec11003(c)(3)	(3)	Page 44
* <input type="checkbox"/> 3b	List Facility Emergency Coordinator (FEC) for each EHS facility and how to contact. Also list back up contact person.	13-25-2-5(c)(3)	Sec11003(c)(3)	(3)	Page 44

4

State Law - "Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to: (A) persons designated in the local emergency plan; and (B) to the public; that a release has occurred consistent with the emergency notification requirements of section 7 of this chapter)." (IC 13-25-2-5(c)(4)(A-B))

<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
<input type="checkbox"/> 4a	Describe how a facility notifies emergency response agencies, Community Emergency Coordinator (CEC), and the State.			(4)	Page 53
<input type="checkbox"/> 4b	Describe how release notification shall take place and to whom that notification must be provided. This may be presented as a flow diagram. <u>Note:</u> Indiana state law requires immediate notification.	13-25-2-5(c)(4)(A)	Sec11003(c)(4)	(4)	Pages 40-41, 53
<input type="checkbox"/> 4c	Describe or present in a diagram whom the Community Emergency Coordinator (CEC) notifies and how that notification shall take place	13-25-2-5(c)(4)(A)	Sec11003(c)(4)	(4)	
<input type="checkbox"/> 4d	Describe public notification procedures. (How will the public be notified of an emergency? Use any existing emergency notification procedure as an example. Also include door-to-door, PA announcements, etc.)	13-25-2-5(c)(4)(B)	Sec11003(c)(4)	(4)	Pages 53-54
<input type="checkbox"/> 4e	Include boilerplate/template public address announcements regarding the release.				Page 53
* <input type="checkbox"/> 4f	List media contact persons and how to reach them.				Pages 33, 54

5

State Law - "Methods for determining the occurrence of a release and the area or population likely to be affected by the release." (IC 13-25-2-5(c)(5))

<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
<input type="checkbox"/> 5a	Describe or identify all release detection mechanisms available at the facility or nearby. (Whistles, sirens, horns, mechanical, environmental, senses, etc.)	13-25-2-5(c)(5)	Sec11003(c)(5)	(5)	Page 53
<input type="checkbox"/> 5b	List public areas that would be affected by releases from facilities in the community including estimated populations. (May be included in vulnerability zone maps. See item 1g.)	13-25-2-5(c)(5)	Sec11003(c)(5)	(5)	Pages 23, 43, 65

6

State Law - "A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this chapter and an identification of the persons responsible for the equipment and facilities." (IC 13-25-2-5(c)(6))

<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
<input type="checkbox"/> 6a	List all resource organizations and contact persons. (May be in table format and should include fire depts., EMS, hospitals, facilities, contractors, etc.)	13-25-2-5(c)(6)	Sec11003(c)(6)	(6)	Pages 29, 34, 47, 54-55
<input type="checkbox"/> 6b	List the resources available from each resource organization. (May be in table format)	13-25-2-5(c)(6)	Sec11003(c)(6)	(6)	Pages 29, 34, 47, 54-55
<input type="checkbox"/> 6c	List equipment / resources that the facilities have on hand. <i>Include response capability and maximum capacity they are able to provide (recommended).</i>				Pages 34, 54-55
<input type="checkbox"/> 6d	Identify who has authority to commit resources from each organization.	13-25-2-5(c)(6)	Sec11003(c)(6)	(6)	Pages 32, 34
<input type="checkbox"/> 6e	Identify the number of trained emergency response personnel available at each facility, their training levels and capabilities. (see item 8a)				Pages 30, 33, 54

7

State Law - "Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes." (IC 13-25-2-5(c)(7))

<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
<input type="checkbox"/> 7a	Attach or reference the location of a general SOP / SOG to address how to conduct an evacuation. Include how to provide for evacuees and how to track evacuees. (Roles and expectations)	13-25-2-5(c)(7)	Sec11003(c)(7)	(7)	Pages 33, 57
<input type="checkbox"/> 7b	Attach a general SOP / SOG to address traffic movement to direct persons away from release area.	13-25-2-5(c)(7)	Sec11003(c)(7)	(7)	Pages 33, 57
<input type="checkbox"/> 7c	Describe what constitutes a primary and secondary evacuation route in your planning district. (i.e., how much traffic can be supported, any obstacles, etc.)	13-25-2-5(c)(7)	Sec11003(c)(7)	(7)	Page 57
<input type="checkbox"/> 7d	Include a map of the primary and secondary evacuation routes.				Page 57
<input type="checkbox"/> 7e	Include a map of the shelter locations and emergency response facility locations such as fire depts., EMS facilities, etc.				Page 57
<input type="checkbox"/> 7f	Include shelter in place procedures and how community will be notified of this protective action.			(7)	Pages 33, 56

8 State Law - "Training programs, including schedules for training of local emergency response and medical personnel." (IC 13-25-2-5(c)(8))					
<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	Location in NRT-1
<input type="checkbox"/> 8a	List each response agency in the county. List their current haz mat certification level(s) and number of personnel at each level. (See item 6e)			(8)	Pages 33, 56
* <input type="checkbox"/> 8b	Include a calendar of LEPC sponsored training activities for the upcoming year.	13-25-2-5(c)(8)	Sec11003(c)(8)	(8)	Pages 54, 71-72
* <input type="checkbox"/> 8c	Include a calendar of response organizations current year haz mat training activities. (Include course description, course content, level of training this applies to i.e.. Awareness, Ops, Tech, Refresher, etc.)	13-25-2-5(c)(8)	Sec11003(c)(8)	(8)	Pages 54, 71-72
9 State Law - "Methods and schedules for exercising the emergency plan." (IC 13-25-2-5(c)(9))					
<input checked="" type="checkbox"/>	<u>Review Will Include The Following Items</u>	Location in the State Regulations	Location in Federal Regulation	Location in Chair's Guidance	NRT-1
* <input type="checkbox"/> 9a	Include an exercise schedule for the plan.	13-25-2-5(c)(9)	Sec11003(c)(9)	(9)**	Pages 63, 70-71
<input type="checkbox"/> 9b	Describe the type of exercise to be conducted. (i.e. tabletop, functional, or full scale.)	13-25-2-5(c)(9)	Sec11003(c)(9)	(9)**	Pages 63, 70-71
<input type="checkbox"/> 9c	Describe the exercise evaluation methods.	13-25-2-5(c)(9)	Sec11003(c)(9)	(9)**	Pages 63, 70-71

1.10 LEPC and EMA Plans

To: LEPC Chairs & EMA Directors

From: Indiana Emergency Response Commission (IERC) Chair

Subject: LEPC and EMA Plans

This memo is to clarify the guidance of the IERC with respect to the relationship of the Local Emergency Planning Committee (LEPC) plan and the emergency operations plan (EOP) of the county emergency management agency (EMA).

Since June of 1992, it has been the IERC's recommendation that the two plans be combined in "a single, comprehensive, and integrated emergency planning document as providing for the most efficient and cost-effective response capability with which you can protect the persons, property, and environment in your emergency planning district."

The IERC also has recognized, however, that many county EOPS are either non-existent or are very outdated, and that it would have delayed the development of many LEPC plans if the EOPS first had to be updated sufficiently to permit the integration of the two documents.

Consequently, the IERC has accepted in the past and continues to accept stand-alone plans from LEPCs when it is not feasible to make the LEPC's plan a part of a county's EOP, *with the ongoing recommendation that the two plans be integrated as soon as it is feasible, but without causing any delay in developing the LEPC's plan.*

As you know, the LEPC funding statute, IC-6-6-10, requires the submission and annual updating of the LEPC's plan in order for the LEPC to receive its annual funding. Timely, annual compliance with federal and state law necessitates that the submission and updating of the LEPC's plan not be delayed if the EOP for the LEPC's county is not yet suitable for integrating with the plan of the LEPC.

It is also important to note that LEPC funds may be used only for the development of the LEPC's plan, not the development of the EMA's complete EOP, whether the LEPC's plan is part of the EOP or whether it is a separate document. EMA's funds must be used for the writing of the EOP, except for the portion of the EOP that constitutes the LEPC's plan.

The guidance documents are issued by the IERC to Indiana's LEPCs on several occasions for the development and evaluation of LEPC plans are, as you may know, the National Response team's NRT-I and NRT-IA, and *Technical Guidance for Hazards Analysis*. The calculations in the latter document have been automated to a great extent by the software program *Computer Aided Management of Emergency Operations (CAMEO)*, which is available from the National Safety Council, if your LEPC does not yet have a copy.

In addition to NRT-1 and NRT-IA and *Technical Guidance for Hazards Analysis*, the IERC has also issued EPA's *Guide to Exercises in Chemical Emergency Preparedness Programs*. These documents are the official guidance provided by the federal agencies responsible for administering the SARA Title III Program nationally, and have not been superseded. The IERC will in the near future issue to each LEPC a copy of the Federal Emergency Management Agency's (FEMA) latest EOP planning guidance, and *State and Local Guidance (SLG) 101*.

Please contact the IERC Representative if you have any remaining questions regarding LEPC plan development, the IERC's planning guidance, or plan review.

Thank you for your cooperation.

1.10 LEPC Interface with IERC, IDHS and Local EMAs

www.in.gov/dhs/files/LEPC_Interface_with_IERC_IDHS_and_local_EMAs.pdf

Introduction

The perils of today's world require governments to be better prepared to deal with emergencies than ever before. Regardless of the nature of the emergency, state and local governments must respond efficiently and effectively on short notice.

At the local level, each county or other jurisdictional unit maintains a Local Emergency Planning Committee ("LEPC"). The LEPC reports directly to, and is a subunit of, the Indiana Emergency Response Commission ("IERC"). The LEPC has specific duties, mandated by law, some of which overlap the broad responsibilities of the local emergency management agency ("EMA"). Although the local EMA delivers reports to the Indiana Department of Homeland Security ("IDHS") (formerly the State Emergency Management Agency), the local EMA is independent of IDHS and rather is a part of local government instead.

The organizational differences greatly affect the interrelationships between the LEPC and the IERC and between the LEPC and the local EMA.

I. IERC and LEPC Interface

Federal law, specifically the Emergency Planning and Right to Know Act ("EPCRA"), establishes the structure of the IERC and LEPCs. EPCRA is part of Title III of the Superfund Amendment and Reauthorization Act of 1986 ("SARA Title III"), found at 42 U.S.C. §§ 11001-11050. The requirements of EPCRA were enacted into Indiana law at Indiana Code (IC) 13-25-2. The IERC's organization and the specific duties of the IERC and LEPCs are found at IC 13-25-1.

Indiana Code 13-25-1-6(a) lists four duties of the IERC. First, the IERC is to encourage and support the development of emergency planning efforts to provide information to the state,

local governments, and public about potential chemical hazards in Indiana. Second, the IERC assists the state in complying with the requirements of SARA Title III. Third, the IERC designs and supervises the operation of emergency planning districts in Indiana. Lastly, the IERC gathers and distributes information needed for effective emergency response planning and preparation.

Indiana Code 13-25-1-6(b) also requires four things of LEPCs. First, the LEPC must satisfy the requirements of SARA Title III. Second, the LEPC must prepare and submit, at least annually, a roster of committee members for the IERC's approval. Third, the LEPC must meet at least twice, on nonconsecutive days, every six months. Finally, the LEPC must submit an annual fiscal report in compliance with IC 6-6-10-8.

The IERC may withhold funds from an LEPC under IC 6-6-10-9 if the LEPC fails to do any of the following seven things annually: 1) submit the fiscal report; 2) provide proof of the published legal notice required under SARA Title III; 3) submit an updated emergency preparedness plan; 4) submit current LEPC bylaws; 5) present evidence of a compliant exercise; 6) provide a current membership committee roster; or 7) submit minutes of the four meetings per year.

The LEPC annual fiscal report summarizes to the IERC funds locally expended in the preceding year that came from the Emergency Planning and Right to Know Fund. Money from the fund may be spent on eight categories of items: (1) preparing and updating a comprehensive emergency response plan required under SARA Title III for the county or emergency planning district; (2) establishing and implementing procedures for receiving and processing requests from the public for information about hazardous chemicals under SARA Title III; (3) training for emergency response planning, information management, and hazardous materials incident response; (4) equipping a hazardous materials response team that provides at least a district wide

emergency planning response if the equipment purchased is consistent with current training levels of the response team members; (5) purchasing communication equipment for a local emergency planning committee's administrative use; (6) paying an optional stipend to local emergency planning committee members who attend regularly scheduled meetings at which a quorum is present in an amount determined by a majority of the local emergency planning committee membership and is not more than twenty dollars (\$20) per member per meeting; (7) paying for SARA Title III risk communication, chemical accident related, and accident prevention projects submitted to and approved by the IERC; and (8) maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team under subdivision (4). An LEPC can receive new funds only if it meets the requirements of IC 13-25-1-6(b), as set out above. Previously distributed funds, under IC 6-6-10-7(b), may be spent on categories 3-8 as described in this paragraph only if a current, compliant plan has been submitted and the training program has been approved by the IERC.

The legal relationship between the IERC and the LEPCs has led the Indiana Attorney General to declare LEPCs as state agencies. While IDHS provides a supportive role for the IERC personnel, it is the IERC, and not IDHS, that supervises the LEPCs.

II. LEPC and Local EMA Interface

In contrast to the LEPC, EMAs are clearly entities that are a distinctive part of local government. The state legislature has found that local EMAs are needed to preserve the lives and property of the state. Indiana Code 10-14-3-17(b)(1) further requires each county to “maintain a county emergency management organization.”

As discussed, the LEPC has specific tasks which are required by law. Some of these legal duties overlap with the broad responsibilities of the county or jurisdictional EMA, creating a potential for conflict. Specifically, both are responsible for the preparedness phase of

emergency management, that is, planning, training, and exercising responsibilities. Furthermore, common membership of both the LEPC and the local EMA Advisory Council also has the potential to create conflicts. A closer look at these overlapping responsibilities within each subtask of the preparedness phase is provided below.

A. Planning Responsibilities

As mentioned, the planning requirement of LEPCs under the EPCRA is specifically limited to SARA Title III discharges. The local EMA, however, is also charged with planning for emergencies, as it must “prepare and keep current a local disaster emergency plan for its area” under IC 10-14-3-17(h). The overlap between LEPCs and EMAs has occasionally resulted in duplication of effort or disagreements over the proper approaches to the nine planning elements required of LEPCs.

Under the all-hazards approach followed by the county EMAs, potential emergencies involving HAZMAT must be anticipated. The EMA’s emergency operations plan (“EOP”) must include an appendix for response to HAZMAT incidents which is prepared and kept current. Potential HAZMAT emergencies include extremely hazardous materials covered by SARA Title III, including toxic chemicals, as well as a variety of other substances.

Planning compliance requirements for local EMAs include submission of the local EOP, including the emergency response plan specifically identifying potential hazards in an appendix to the EOP. This emergency response plan, although an appendix to the EMA’s EOP, remains the responsibility of the LEPC. As an appendix, the SARA Title III plan uses the remainder of the EOP, referring such matters as community notification, evacuation, training, and exercising to the appropriate portions of the EOP. The updated version of the SARA Title III plan is due on or before December 30th of each year under Indiana Code 13-25-2-5.

B. Training Responsibilities

Local Emergency Planning Committees are required to include training and exercising in their emergency management plans under IC 13-25-2-5(c)(8) and IC 13-25-2-5(c)(9), respectively. Indiana Code 6-6-10-7(b)(3) states that training and exercising are matters for which LEPCs may legitimately expend funds. Categories of appropriate training may include development and delivery of training to individuals and groups with their emergency management responsibilities in the area of hazardous materials response.

C. Exercising Responsibilities

Emergency Planning and Community Right-to-know Act requires that the LEPC's plan must be exercised at least once annually. The IERC has stated that this exercise may be a tabletop, functional, or full-scale exercise. The IERC must receive a thirty (30)-day advance notification and brief description of the exercise to be conducted. In addition, the LEPC must request, and receive, from the IERC approval of each exercise.

An LEPC activity must meet certain requirements before it may qualify for a SARA Title III release of funds. These requirements specify the number and type of responding units and the type and quantity of certain chemicals involved. The IERC has also authorized an actual event to qualify as the LEPC's annual exercise, so long as the LEPC requests such a substitution from the IERC. This request document is available from IERC.

Working together, local EMAs and LEPCs can unite their requirements in a combined exercise which will satisfy both IERC and IDHS.

D. Common Membership Issues

Local Emergency Planning Committees and EMA Advisory Councils frequently have members in common. The local EMA director is almost always an LEPC member, and may even be the chair of the LEPC. Sometimes, this situation may tend to blur the lines of

responsibility between the EMA and the LEPC. And indicated above, LEPCs and EMAs are parts of different governmental entities. These diverging lines of authority create legal requirements for separate control, finances, and meetings.

1. Separate Control

The two groups must be separately controlled due to the legal lines of authority above the LEPC and the local EMA. The twelve (12) membership categories for the LEPC specified at EPCRA Section 301(c) must be included in the roster submitted to the IERC for approval on an annual basis, at least, by February 14. The six (6) membership categories for the county Emergency Management Advisory Council, which oversees local EMA activities, are specified at Indiana Code 10-14-3-17(c).

2. Separate Finances

Finances are also different for the two agencies. The local EMA's budget is part of the local unit of government's budget. The local unit of government retains full control over the EMA's budget as a part of local government.

The LEPC's finances are derived from the Indiana Local Emergency Planning and Right to Know Fund, whose statutory requirements derive from the federal law. The Indiana statute is found at Indiana Code 6-6-10. This law requires, at IC 6-6-10-7(d), that the county fiscal body "shall" appropriate the funds requested by the LEPC in a compliant spending plan. Under this law, the county acts as administrator of the funds, but it has no say as to the actual expenditure of those funds. This independence from the county government results from the LEPC's nature as a state agency.

By state and federal law, the funds derived from the Indiana Local Emergency Planning and Right to Know Fund may only be expended on LEPC activities. Both the Indiana Legislature and the U.S. Congress have limited these funds specifically to LEPC budget items.

The reason for this limitation is that the funds come from SARA Title III fees, and the funds are earmarked for expenditure on preparing for emergency responses.

3. Separate Meetings

Frequently, given the common membership of LEPCs and EMA Advisory Councils, meetings will be scheduled on the same night for both entities. Often at such meetings, several different matters will be discussed. Such matters might be LEPC or EMA issues, or even issues that overlap the two. Legally, the matters must be separated and handled in different meetings. One group's meeting must be held and adjourned before matters of the other entity may be dealt with.

III. Conclusion

The common goals of saving lives and protecting property unite local EMAs and LEPCs, just as they unite IDHS and the IERC. All involved must, however, work with both mutual respect and a clear understanding of the legal constraints on local EMAs and the respective LEPCs.

Local EMAs and LEPCs can combine resources in appropriate ways to save funds and prevent duplicate activity. These steps must be taken with care, however, since the two agencies are units of different levels of government. Working carefully together, local EMAs and LEPCs can combine forces to help assure that the best possible steps have been taken to plan, train and exercise for potential SARA Title III Extra Hazardous Substances releases.

1.12 Procedure for Request and Appropriation of LEPC Funds

RE: Procedure for Request and Appropriation of Funds to Local Emergency Planning Committee (LEPC)

Dear County Council President, County Auditor and LEPC Chair:

We are writing on behalf of the Indiana Emergency Response Commission (IERC) and the State Board of Accounts (SBA) to share with you our common approach to the request for, and appropriation of, funds for LEPCs. This is a matter which has caused some confusion in the past, due to the LEPC's unusual nature as a state agency which receives its funds through the counties, which act as custodians of those funds.

I. The Law on LEPC Expenses

The requirements of the Emergency Planning and Right to Know Act (EPCRA) mandate the structure of the IERC and LEPCs. EPCRA is part of Title III of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III), which is found at 42 United States Code Sections 11001-11050. The requirements of EPCRA were enacted into law in Indiana at Indiana Code 13-25-2. The IERC's organization and specific duties of the IERC and LEPCs are found at Indiana Code 13-25-1.

The funds for the LEPC originate from the Indiana Local Emergency Planning and Right to Know Fund, whose statutory requirements derive from federal law. The Indiana statute, IC 6-6-10-7(d), requires that the county fiscal body "shall" appropriate the funds requested by the LEPC in a compliant spending plan. The intent and effect of this law is that the county act as custodian of the funds, but that it have no say as to the actual expenditure of the funds. The actual expenditure of these funds is overseen by the IERC. This independence from the county government results from the LEPC's nature as a state agency, under the oversight of the IERC.

The funds derived from the Indiana Local Emergency Planning and Right to Know Fund may, by law, be expended only on LEPC activities. The reason for this limitation is that the funds come from SARA Title III fees, and the funds are earmarked for expenditure on preparing for response to releases of the substances generating the funds. Although some county leaders may question this straightforward limitation, it derives from both federal and state statute. Both the Indiana legislature and the U.S. Congress have decided that these funds may be spent only on LEPC budget items.

II. LEPC Expense Categories

Money from the Indiana Local Emergency Planning and Right to Know Fund may be spent by LEPCs on eight categories of items specified in Indiana Code 6-6-10-7(b):

1. Preparing and updating the SARA Title III plan;
2. Establishing and implementing procedures for dealing with public information requests;

3. Training for emergency response planning, information management, and hazardous materials (HAZMAT) incident response;
4. Equipping a HAZMAT response team which provides response throughout the LEPC's district if the equipment is consistent with team training;
5. Purchasing communications gear for the LEPC's administrative use;
6. Paying LEPC members a \$20 meeting stipend; and
7. Paying for SARA Title III risk communication, chemical accident related, and accident prevention projects submitted to and approved by the IERC.
8. Maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team under subdivision (4)

The law clearly mandates that an LEPC may receive new, post-1997 funds only if it has met the requirements of Indiana Code 1325-1-6(b). Funds distributed before 1997, under Indiana Code 6-610-7(b), may be spent on categories 3-7 only if a current, compliant plan has been submitted and the training program has been approved by the IERC.

III. The Procedure for LEPCs Requesting and Receiving Funding

The procedure for the LEPC to request and receive funding is as follows:

1. The LEPC must prepare a funding request, listing as line items the seven (7) categories for expenditure specified under IC 6-6-10-7(b). The funding request must be approved by the LEPC in a regular meeting and this approval must be reflected in official minutes of the LEPC.
2. The LEPC must submit its funding request and a copy of the LEPC's official minutes reflecting approval to the County Auditor and County Council.
3. The LEPC may participate in the annual budget hearings held by the County Council.
4. The County Council "shall" approve the LEPC's budget, as required by IC 6-6-10-7(d).
5. The County Auditor shall act as the custodian of the approved funds, writing checks to cover expenditures from the various line items as requested.
6. The County Auditor must ensure that appropriated funds are not invested in a manner which prohibits their ready access upon request of the LEPC.
7. Additional expenditure requests for funding beyond the appropriated funds must include a funding request and a copy of the LEPC's official minutes reflecting approval of the supplemental funding request to the County Auditor.
8. As the LEPC is a state agency, the county must not impose any requirements upon the nature or manner of expending LEPC funds beyond those outlined above in the relevant state law.

Thank you for your cooperation.

1.13 LEPC Plan Exercise Policy

TO: Local Emergency Planning Committee (LEPC) Chairs

FROM: Indiana Emergency Response Commission (IERC), Chair

RE: Indiana Emergency Response Commission Exercise Reporting

The IERC has approved the use of two exercise report forms to assist all LEPC's in meeting the SARA Title III Annual Exercise requirements.

The first form approved, was the Indiana LEPC Exercise Proposal Notification form. The LEPC must file this form 30 days before an exercise to qualify for exercise credit. Instructions for this form are printed on the reverse side. Go to www.in.gov/dhs/files/exerciseprop.pdf for a copy of this form.

The second form approved, was the SARA Title III Actual Incidents/Exercise Report and Request for LEPC Plan Exercise Credit form. The IERC has approved actual incidents to receive exercise credit if all of the requirements on the report form are completed. Instructions for this form are printed on the reverse side. Go to www.in.gov/dhs/files/exercisecredit.pdf for a copy of this form.

Thank you for your cooperation.

1.14 LEPC Training Resource Guide Requirements

TO: Local Emergency Planning Committee (LEPC) Chairs

FROM: Indiana Emergency Response Commission (IERC) Training Committee, Chair

RE: LEPC Training Resource Guide Requirements

Please note that an LEPC can only use funds received under IC 6-6-10 to pay for services rendered by vendors listed on the approved LEPC training resource guide located at www.in.gov/dhs/files/lepcresources.pdf.

To be considered for addition to this list, the following must be submitted to the IERC Training Committee:

- A formal letter from the vendor requesting to be added to the resource list
- The specific training service(s) offered by the vendor must be indicated
- The certification(s)/qualification(s) of the trainer(s) for the specific service(s) offered (Instructors must be state certified at Instructor II-III levels)
- Samples of the training materials used by the vendor.

The proposed training/service(s) must address hazardous materials awareness and/or response as defined under the Emergency Planning and Community Right-to-know Act.

The request to be added to the LEPC training resource must be submitted by mail to the following address:

Indiana Emergency Response Commission
Training Committee Chair
302 West Washington Street, Room E-208
Indianapolis, IN 46204-2760

Thank you for your cooperation.

1.15 Community Emergency Response Training

To: Local Emergency Planning Committee (LEPC) Chair

From: IERC Training Committee Chair

Date: July 14, 2008

Re: Recommendation for Community Emergency Response Training

The IERC recommends that LEPCs inform all community response agencies that hazardous materials (Hazmat) response training funds are available. LEPCs should be aware that Hazmat training and/or Hazmat training exercises are reimbursable through the Federal Hazardous Materials Emergency Preparedness (HMEP) grant. Collaborative relationships are recommended to enhance training opportunities and coordination within each of the 10 Indiana Department of Homeland Security planning districts. Sample information flyers are attached as Appendix A of this chapter. [www.in.gov/dhs/files/Appendix_A_\(sample_information_for_emergency_responders.pdf](http://www.in.gov/dhs/files/Appendix_A_(sample_information_for_emergency_responders.pdf)

Further clarification:

1. The training, including the training instructor, should be pre-approved by the IERC if reimbursement will be requested. A listing of preapproved training is available as Appendix B to this chapter. This listing will be updated at least annually.
2. LEPCs should encourage all emergency responders in the community to receive HAZMAT training commensurate with their role in the event of a HAZMAT incident. Emergency Management Agency/Homeland Security directors are often members of the LEPC and should also assist in facilitating this training.
3. Additional recommended hazardous materials training for emergency response agencies should include:
 - Radiation safety and incident response
 - Personnel exposure
 - Controlling contamination
 - Detecting radiological materials and contamination
 - Use of meters and other detection devices
 - Biological agent safety and incident response
 - Basic chemistry for HAZMAT emergency responders
 - Routine training on use and maintenance of HAZMAT response equipment (Detection meters and devices), including calibration schedules
 - Multi-agency HAZMAT training that should compare and contrast capabilities, limitations and available equipment
4. LEPCs should submit invoices for reimbursement as soon as the training has been completed.
5. The IERC recommends that LEPCs use prudent judgment in securing a vendor by considering multiple vendors to ensure the best use of LEPC funds.

Appendix A—Sample information for county/district emergency responders

[www.in.gov/dhs/files/Appendix_A_\(sample_information_for_emergency_responders.pdf\)](http://www.in.gov/dhs/files/Appendix_A_(sample_information_for_emergency_responders.pdf))

To: Fire Departments, EMS providers, and Law Enforcement Agencies

From: _____ County Local Emergency Planning Committee (LEPC)

Re: Funding for Hazardous Materials Training is available

Sara Title III of the Community Right to Know Act provides funding for emergency responders for hazardous materials training. Attached is a list of approved training and trainers. If your agency would like to be considered for reimbursement under the Hazardous Materials Emergency Preparedness (HMEP) Grant program for training listed, please make a formal (written) request to your LEPC.

If you would like to pursue training that is not pre-approved, you may make a formal request to the LEPC for consideration of reimbursement funding.

If you have any questions, please contact _____, Chair of _____ County LEPC.

Appendix B—Approved Training Topics

www.in.gov/dhs/files/IERC_Aproved_Training_Topics.pdf

www.in.gov/dhs/files/lepcresources.pdf

The following is a list of approved training topics that may be considered for reimbursement under the HMEP Training Grant program:

- CAMEO—16 hours
- CAMEO—Train-the-Trainer
- Technician Course—80 hours
- Chemistry of Hazardous Materials—80 hours
- Operating Site Practices—80 hours
- Incident Command—16 hours
- Hazardous Materials Operations (Train-the-Trainer)—16 hours
- Hazardous Medical Technician—16 hours
- Hazardous Materials Decontamination—16 hours
- CAMEO Marplot—16 hours
- Hazardous Materials Technician Refresher—16 hours
- Hazardous Materials Operation Refresher—8 hours
- Hazardous Materials Contingency Plan Exercise Course—8 hours

Appendix C—Approved Planning Topics

www.in.gov/dhs/files/IERC_Aproved_Planning_Topics.pdf
www.in.gov/dhs/files/lepcresources.pdf

The HMEP grant program may consider reimbursement of LEPCs for the following planning activities:

- Developing, improving, and implementing emergency plans under Title III
- Conducting commodity flow studies
- Determining the need for regional hazardous material response

SECTION 2

LAWS

- 2.1 Open Door Law/Public Records Act (IC 5-14-1.5 and IC 5-14-3)** www.in.gov/pac/2328.htm
- 2.2 Ethics Laws- Indiana Code of Ethics (IC 4-2-6 and 42 IAC)** www.in.gov/legislative/iac
- 2.3 Establishment & Composition of IERC (IC 13-25-1)**
www.in.gov/legislative/ic/code/title13/ar25/ch1.html
- Indiana Emergency Response Commission**
- 2.4 Indiana’s Hazardous Materials Law (IC 13-25-2 & 3)**
- Chapter 2—Emergency Planning and Notification www.in.gov/legislative/ic/code/title13/ar25/ch2.pdf
- Chapter 3—Responsible Property Transfer law www.in.gov/legislative/ic/code/title13/ar25/ch3.pdf
- 2.5 SARA Title III (42 USC §§11001-11050)**
www.access.gpo.gov/uscode/title42/chapter116_subchapteri_.html
www.access.gpo.gov/nara/cfr/waisidx_01/40cfrv24_01.html
- Emergency Planning and Community Right-to-Know Act of 1986 (40 CFR Part 350, 355, 370, and 372)
Subchapter I—Emergency Planning and Notification (40 CFR 355)
Subchapter II—Reporting Requirements
Subchapter III—General Provisions
42 USC Part 370—Hazardous Chemical Reporting: Community Right-to-Know (40 CFR 370)
40 CFR 350—Trade Secrecy Claims: EPCRA Information
40 CFR 372—Toxic Chemical Release Reporting
- 2.6 LEPC Funds Distribution & Use (IC 6-6-10)**
- Article 6—Local Emergency Planning and Right-to-Know Fund
www.in.gov/legislative/ic/code/title6/ar6/ch10.pdf
- 2.7 Immunity for Oil Discharge Response Assistance (IC 13-24-2-1)**
- Chapter 2—Immunity for Oil Discharge Response Assistance
www.ai.org/legislative/ic/code/title13/ar24/ch2.pdf
- 2.8 Prohibition Against Purchase Of Insurance (IC 4-13-1-17 and IC 34-13-3-20)**
- Indiana Code 4-13-1-17—Insurance; Loss or Damage to Property
www.ai.org/legislative/ic/code/title4/ar13/ch1.pdf
- Indiana Code 34-13-3-20—Liability Insurance; Prohibitions
www.ai.org/legislative/ic/code/title34/ar13/ch3.pdf

SECTION 3

ATTORNEY GENERAL OPINIONS

3.1 Liability of LEPC Members

TO: Local Emergency Planning Committees (LEPCs)

FROM: Indiana Emergency Response Commission (IERC), Chair

SUBJECT: Liability of LEPC Members

The Commission has requested of the Indiana Attorney General an opinion regarding the legal status and personal liability of LEPC members.

The Attorney General's Office has researched the issue and has rendered the following opinion:

1. The IERC and the LEPC are state entities and are subject to the Open Door, Public Records, Administrative Procedure, and Tort Claims laws.
2. Local government units do not have authority to regulate LEPC activities - that is, they cannot require LEPC's to take or refrain from taking any particular action via a local ordinance.
3. There should be no personal liability for LEPC members' judgment in enacting emergency response plans; however, personal liability could arise for conduct outside the scope of their duties, or in the event of failure to perform ministerial duties (non-discretionary duties where judgment is not allowed).

ADMINISTRATIVE ADVISORY LETTER

Dear Chair:

This is in response to your request for an opinion regarding the following questions:

1. Whether the Indiana Emergency Response Commission (IERC) and the Local Emergency Planning Committees (LEPCs) are state government entities and, thus, subject to the following:
 - A. The Indiana Open Door Law
 - B. The Indiana Public Records Law
 - C. The Indiana Administrative Adjudication Act
 - D. The Indiana Tort Claims Act
2. Whether political subdivisions of the state may require LEPCs to take or to refrain from taking any particular action by means of a local ordinance.
3. Whether personal liability exists for LEPC members in carrying out their statutory responsibilities.

ANALYSIS

I. Legal Status of the IERC and LEPCs

The IERC was created by Governor Robert D. Orr as required by the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001 et seq. (1987)). Exec. Order No. 4-87, 10 Indiana Register 223571M). 42 U.S.C. 11001 (a) provides, in relevant part:

...the Governor of each state shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed.

In addition, LEPCs were created by the IERC after each county had been designated as an emergency planning district. 42 U.S.C. 11001(b), (c). The functions of LEPCs, as set forth in the EPCRA are as follows:

(1) to prepare and annually review an emergency response plan (42 U.S.C. §11033); (2) to receive required notices when extremely hazardous substances are released (42 U.S.C. §11004); (3) to receive material safety data sheets from owners and operators of certain facilities and to make this data available to the public (42 U.S.C. §11021); (4) to receive emergency and hazardous chemical inventory forms from owners and operators of certain facilities and make them available to the public (42 U.S.C. §11022); (5) to publish an annual notice' stating that the emergency response plan, data sheets, and inventory form had been submitted (42 U.S.C. §11044).

All executive power is vested in the governor by Article III, Section 1 of the Indiana Constitution. In *Tucker v. State* (1941), 218 Ind. 614, 35 N.E.2d 270, the Supreme Court note that executive power is the power to execute laws as distinguished from the power to enact laws and the power to judge them. Nevertheless, the executive powers of the governor are broad. *Id.* at 628, 35 N.E.2d at 284-285. The IERC was established by the exercise of the governor's

executive power. Hence, the IERC is an entity of state government.

Moreover, the IERC designates emergency response districts and appoints a LEPC for each district. 42 U.S.C. 11001(b), (c). The IERC also reviews the planning activity of the local committees and may change the membership of LEPCs if warranted. It is reasonable to assume, therefore, that a local committee which is appointed by a state commission and is subject to supervision by the commission is an entity of state government. This assumption is substantiated by the following language from *Ayres v. Indian Heights Volunteer Fire Department* (1986). Ind., 493 N.E.2d 1229 1235:

When private individuals or groups are endowed by the state with powers or functions governmental in nature, they become agencies or instrumentalities of the state and are subject to the laws and statutes affecting governmental agencies and corporations.

Since LEPCs are “endowed by the state with powers and functions governmental in nature,” they are also instrumentalities of the state.

Since the IERC and LEPCs are state entities, it is necessary to determine whether they are subject to the Indiana Open Door Law; the Indiana Public Records Law; the Indiana Administrative Adjudication Act; the procedure for the adoption of rules; and finally, the Indiana Tort Claims Act. The Indiana Open Door Law applies to “all meetings of the governing bodies of public agencies.” IC 5-14-1.5-3(a). The governing body of a public agency in Indiana includes any board, commission, council, or other body which takes official action on public business and includes any committee appointed by the governing body or its presiding officer if the committee has been delegated authority to take official action on public business. IC 5-14-1.5-2(b). To determine what is and what is not a public agency, the act lists five broad definitions. Indiana Code Section 5-14-1.5-2(a) reads:

(a) “Public agency” means:

- (1) any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state;
- (2) any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) any entity which is subject to either:
 - (A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the state board of accounts;
- (4) any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities; or
- (5) any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

If an organization matches anyone of the five, it is a public agency and its governing body must open its meetings to the public. To be a governing body, however, the group must be one that can take official action. The act provides six broad definitions of “official action.” “Official action,” as defined by IC 5-14-1.5-2(d), means: (1) to receive information; (2) to deliberate; (3)

to make recommendations; (4) to establish policy; (5) to make decisions; (6) to take final action. Finally, in addition to the specified non-meetings as defined in IC 5-14.1-5-2(c)—the “not-include” clause of the meeting definition, the act also provides that it is the intent of the legislature that the deliberations and actions of public agencies be conducted openly “unless otherwise expressly provided by statute.” Indiana Code Section 5-14-1.5-1.

From the foregoing, it is clear that the act applies to the IERC and LEPCs. Indeed, one of the initial responsibilities of LEPCs is to “establish rules by which the committee shall function.” 42 U.S.C. 11001 (c). Some of these rules are set forth in the Open Door Act.

Further, the Public Records Law provides for the public’s access to records. To this end, IC 5-14-3-1 states, in relevant part:

...it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

To determine what is and what is not a public agency, IC 5-14-3-2 lists six broad definitions:

“Public agency” means:

- (1) any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state;
- (2) any political subdivision as defined by IC 36-1-2-13 or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power;
- (3) any entity or office that is subject to:
 - (A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or
 - (B) an audit by the state board of accounts;
- (4) any building corporation of a political subdivision that issues bonds for the purpose of constructing public facilities;
- (5) any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff;
- (6) any law enforcement agency, which means an agency or department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff’s department of a political subdivision., prosecuting attorneys, members of the excise police division of the alcoholic beverage commission, and conservation officers of the department of natural resources; and
- (7) any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-1.5.

A “public record” is defined by IC 5-14-3-2 as follows:

“Public Record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, or any other material, regardless of form or characteristics.

The public’s access to information, however, has been limited by twenty-two (22) exemptions. IC 5-14-3-4 differentiates between two types of exempted records. The first type includes public records that cannot be disclosed by the public agency, “unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery.” IC 5-14-3-4(a). Nine categories of public records fall within this absolute exemption rule:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by public agency under specific authority to classify public records as confidential.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential information obtained, upon request, from a person....
- (6) Information concerning research... conducted under the auspices of an institution of higher education
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the Supreme Court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-4-8.

In addition, to these absolute exemptions, there are sixteen categories of public records that fall under a discretionary exemption. IC 5-14-3-4(b). Under this section, the public agency holding the requested record is given the discretion to grant or deny the release of the requested record.

Clearly, the IERC and LEPCs are “public agencies” within the meaning of IC 5-14-3-2. The EPCRA contains extensive provisions for the collection and dissemination of information by the IERC and LEPCs. See, for example, 42 U.S.C. §11044. Hence, all information received or generated by the IERC and LEPCs are “public records” and must be disclosed to the public unless an exception to disclosure exists.

Also, the Administrative Procedure Act, in an article entitled “Administrative Orders and Procedures,” IC 4-21.5-1-1 et seq., sets forth the procedures an agency must follow when it issues orders. Indiana Code Section 4-21.5-1-3 defines “agency” as “any officer, board, commission, department, division, bureau, or committee of state government that is responsible for any stage of a proceeding under this article.” Also, the word “order” is defined as “an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes a license.” Since the IERC and LEPCs are instrumentalities of the state, they are subject to this article.

In addition IC 5-19-1-1 expressly authorizes the state or any political subdivision of the state “to do any and all acts, and to make any rule, regulation, order, or finding, which may be necessary to cooperate with the federal government or to effectuate the purposes of any such federal law.”

Since the IERC was established as required by EPCRA (41 U.S.C. 11101 et seq.), the IERC and LEPCs may adopt rules to implement their respective responsibilities. The rules, however, must comply with the rulemaking procedures set forth in IC 4-22-2 et seq.

Finally, the applicability of the Indiana Tort Claims Act to the activities of the IERC and LEPCs will be discussed in subsequent section of this opinion.

II. LEPCs and Local Government

The legislature, by means of the Home Rule Act (IC 36-1-3-1 et seq.) granted power to the electorate of a local governmental unit for the effective operation of government as to local affairs. A “unit,” under this act, includes a county, municipality, or township. IC 36-1-2-23. The powers granted to a unit are set forth in IC 36-1-3 4(b):

A unit has:

- (1) All powers granted it by statutes; and
- (2) All other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

In addition, IC 36-1-3-5 discloses limitations on the exercise of power by local government:

A unit may exercise any power it has to the extent that the power:

- (1) Is not expressly denied by the Indiana Constitution or by statute; and
- (2) Is not expressly granted to another entity.

Also, IC 36-1-3-8(7) expressly prohibits local government from regulating conduct that is regulated by a state agency, except as expressly granted by statute.

Since LEPCs are instrumentalities of the state, local government may not regulate their activities. Also, there is no Indiana statute which empowers local government to regulate activities of LEPCs.

III. Tort Liability

The liability of members of LEPCs is governed by the Indiana Tort Claims Act, IC 34-4-16.5 et seq. This act provides that a current or former employee of a governmental entity who acts within the scope of his employment cannot be personally liable if a loss results from one of sixteen (16) specified acts or omissions. IC 34-4-16.5-3. The term “employee” is defined by IC 34-4-16.5-2 as a person presently or formerly acting on behalf of a governmental entity... including members of boards, committees, commissions, authorities and other instrumentalities of governmental entities, and elected public officials....” Also, IC 34-4-16.5-2(c) defines “governmental entity” as the state or a political subdivision of the state. The “state” is defined by IC 34-4-16.5-2(g) as “Indiana and its state agencies.” Further, a “political subdivision” is a (1) county; (2) township; (3) city; (4) town; (5) separate municipal corporation; (6) special taxing district; (7) state college or university; (8) city or county hospital; (9) school corporation; (10) board or commission of one of the entities listed in subdivisions (1) through (9). Indiana Code Section 34-4-16.5-2 (f).

LEPC members are employees within the meaning of IC 34-4-16.5-2(b) if LEPCs are considered governmental entities. While LEPCs are not political subdivisions of the state, they are within the scope of the definitions of the words “state” in IC 34-4-16.5-2(g) and “state agency” in IC 34-4-16.5-2(h)—“a board, commission... or other instrumentality of the state.... 11 Thus,

LEPC members are employees of a governmental entity and are immune from personal liability for losses resulting from certain specific acts or omissions.

Nevertheless, if an act or omission of a LEPC member that causes a loss is not covered by the statutory grant of immunity, IC 34-4-16.5-5 sets forth the liability of employees of governmental entities for non-immune acts or omissions. First, an employee's liability is coextensive with the governmental entity if both are sued. However, if a final Judgment against or a settlement with the governmental entity is obtained, the claimant may not continue a cause of action against the employee. Indiana Code Section 34-4-16.5-5(a); *Coghill v. Badger* (1981), Ind. App., 418 N.E.2d 1201, 1212. Second, if an employee is held personally liable after being sued alone or together with the governmental entity, the governor may order the entity to pay any judgment or settlement against the employee if the act or omission which caused the loss was within the scope of the employee's employment and if the governor determines that paying the judgment or settlement "is in the best interests of the governmental entity." Indiana Code Section 34-4-16.5-5(b). Third, if the act or omission which caused a loss was within the scope of the employee's employment, the governmental entity must provide counsel for and pay all costs, and fees incurred by or on behalf of the employee in defense of the claim. Indiana Code Section 34-4-16.5-5(c).

Moreover, it is well to note a typical claim in which an employee of a governmental entity is personally liable — a claim alleging negligence in carrying out a ministerial function. A ministerial function is the opposite of a discretionary function for which immunity is provided by IC 34-4-16.5-3(6). In *Galey v. Board of Commissioners* (1910), 174 Ind. 181, 182, 91 N.E. 593, 5914-, the Supreme Court defined the term "ministerial act" as "one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of, his own Judgment upon the propriety of the act being done." Therefore, to determine the potential tort liability of LEPC members, it is necessary to review the functions of LEPCs and to decide whether the functions are "discretionary" or "ministerial."

The duties of LEPCs as disclosed in the EPCRA are: (1) to prepare and annually review an emergency response plan (42 U.S.C. §11033); (2) to receive required notices when extremely hazardous substances are released (42 U.S.C. §11004); (3) to receive material safety data sheets from owners and operators of certain facilities and to make this data available to the public (42 U.S.C. §11021); (4) to receive emergency and hazardous chemical inventory forms from owners and operators of certain facilities and make them available to the public (42 U.S.C. §11022); (5) to publish an annual notice stating that the emergency response plan, data sheets, and inventory forms had been submitted (42 U.S.C. §11044).

The preparation of an emergency response plan is discretionary even though guidelines are provided by state and federal agencies. See, for example, 42 U.S.C. §11003(c). As to items 2-5 above, facility owners and operators must produce the information while LEPCs must make the information available to the public. The responsibility of LEPCs in items 2-5 is ministerial. In sum, members of LEPCs are subject to personal liability not only for tortious conduct committed outside the scope of their duties, but also for negligence in connection with their performance of ministerial functions. However, regarding the enactment of an emergency response plan where the judgment of the members of a LEPC may be subsequently challenged, the members should be protected from liability by IC 34-4-16.5 3(6).

Finally, it is important to examine liability under the EPCRA. 42 U.S.C. §11046 (C) and (D) provide that a civil action may be commenced against the IERC for failure to provide certain information. Also, 152 U.S.C. §11046(g) states that "[n]othing in this section shall restrict or

expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).”

CONCLUSION

My research indicates:

I. The IERC and LEPCs are instrumentalities of the state. As such, the Open Door Law; the Public Records Law; the Administrative Orders and Procedures article of the Administrative Procedure Act, and the Tort Claims Act are applicable to the activities of these entities.

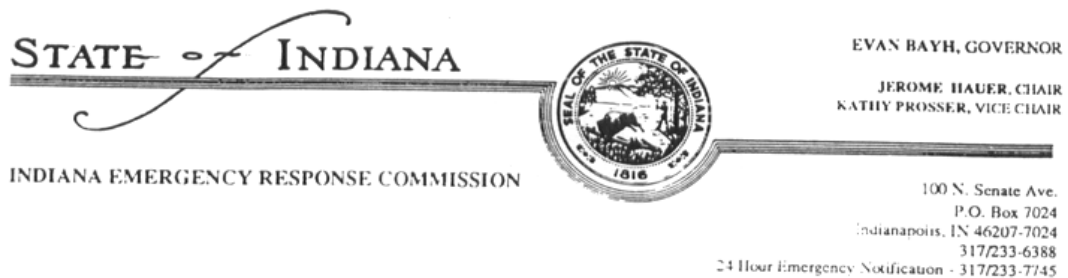
II. Local government may not regulate the activity of LEPCs.

III. Members of LEPCs are subject to personal liability not only for tortuous conduct committed outside the scope of their duties, but also for negligence in connection with their performance of ministerial functions. However, in enacting an emergency response plan where the judgment of the members of a LEPC may be later challenged, the members should be protected from liability by IC 34-4-16.5-3(6).

Respectfully submitted

Deputy Attorney General

3.2 Combining LEPCs and EMACs



TO: Anne Mullin, Deputy
Attorney General

FROM: Greta Hawvermale, Vice-Chair *hgm 3/14/94*
Indiana Emergency Response Commission

SUBJECT: Legality of Combining Local Emergency Planning
Committees (LEPCs) and Emergency Management Advisory
Councils

DATE: August 12, 1994

At its last meeting, on July 11, 1994, the IERC voted to request of your office an opinion regarding the legality and/or advisability of combining into one body in any given county that county's LEPC and that county's Emergency Management Advisory Council.

The LEPCs are created by the Emergency Planning and Community Right-to-Know Act, and the Advisory Councils by Indiana Title 10.

Thank you in advance for your assistance.



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OFFICE OF THE ATTORNEY GENERAL
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
402 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

DEPARTMENT
OF
ENVIRONMENTAL
MANAGEMENT

PAMELA CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

WRITER'S: _____

August 29, 1994

*Privileged & Confidential
Contains Deliberative Material
& Communications Covered by the
Attorney-Client Privilege.
NOT AN OFFICIAL OPINION.*

VIA INTER-DEPARTMENTAL MAIL

Greta Hawvermale, Vice-Chair
Indiana Emergency Response Commission
Indiana Government Center North, Room 1255
Indianapolis, Indiana 46204

RE: Legality of combining local emergency planning committees and Emergency Management Advisory Councils, No. 94-235.

Dear Greta:

This is in response to your memorandum, dated August 12, 1994, in which you requested a review of the legality of combining local emergency planning committees (hereinafter, "LEPCs") with Emergency Planning Advisory Councils, (hereinafter, "EMACs"), which have been established in the same county. For the reasons cited below, the combination of LEPCs and EMACs at the county level is not authorized under the current statutory scheme, and therefore, would not be advisable.

EMACs are authorized under the Indiana Emergency Management and Disaster Law, (hereinafter, "EMD Law"), I.C. 10-4-1, *et seq.* The membership of an EMAC is comprised of the following individuals or their designees: president of the county executive, president of the

Greta Hawvermale, Vice-Chair
August 29, 1994
Page Two

county fiscal body, mayor of each city located within the county, an individual representing all legislative bodies within the county, representatives of private and public agencies which can be of assistance in emergency management as deemed appropriate and a commander of a local civil air patrol unit within the county. I.C. 10-4-1-10(d). The EMD Law grants authority to the counties to support EMACs in many ways including the appropriation of funds, personnel, materials and equipment. I.C. 10-4-1-10(1). EMACs may use funds for whatever purposes the county executive deems appropriate for carrying out emergency management functions. Counties may make orders, rules or regulations to carry out the EMD Law so long as they are not in conflict with those promulgated by the governor or the state emergency management agency. I.C. 10-4-1-15.

One the other hand, LEPCS were created by Title III of the federal Superfund Amendments and Reauthorization Act of 1986, (hereinafter, "SARA"), 42 U.S.C. 11001, *et seq.* LEPC members are appointed by the Indiana Emergency Response Commission from among fourteen different categories including elected state and local officials, community groups and firefighters. 42 U.S.C. 11001(c). In addition to other responsibilities, LEPCs serve as a receptacle for information concerning the hazardous chemicals present within the county. 42 U.S.C. 11022. The Indiana Local Emergency Planning and Right to Know Fund, I.C. 6-6-10 *et seq.*, provides for the funding of LEPC activities and restricts the use of available funds for the purposes of SARA. I.C. 6-6-10-7.

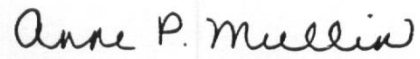
EMACs and LEPCs do perform similar functions. Both entities, for example, are empowered to develop emergency response plans. LEPCs deal exclusively with chemical emergencies and SARA outlines the requirements for chemical emergency plans. 42 U.S.C. 11003. EMACs deal with chemical emergencies as well as other types of emergencies and disasters under the EMD Law. I.C. 10-4-1-3(1) and I.C. 10-4-1-10(1). The EMD Law provides for chemical emergencies, but the plans prepared for the purposes of SARA may also satisfy the requirements of the EMD Law.

However, there are administrative concerns under the current statutory framework which would require EMACs and LEPCs to retain separate identities. For example, the Indiana Open Door Law, I.C. 5-14-1.5-1, *et seq.*, requires that governing bodies, such as EMACs and LEPCs maintain separate records of deliberations and activities. In addition, counties are required to maintain separate accounts for funds received under the authorizations of the EMD Law and SARA. These funds may not be commingled or used other than as directed in the enabling acts for each of the entities. For these reasons, LEPCs and EMACs are separate entities and, although the functions may be similar, the combination of the two entities raises many issues which would be more appropriately addressed through legislation.

Greta Hawvermale, Vice-Chair
August 29, 1994
Page Three

If you have any questions, please feel free to contact me at 232-6356.

Sincerely,

A handwritten signature in cursive script that reads "Anne P. Mullin".

Anne P. Mullin
Deputy Attorney General

ss/5899-1

3.3

14-3)

Open Door Law Requirements (IC 5-14-1.5 & IC 5-

www.in.gov/pac/2328.htm



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PAMELA CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

February 21, 1995

**Privileged and Confidential, Contains
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NOT AN OFFICIAL OPINION**

Via Interdepartmental Mail

Melvin J. Carraway, Chair
Indiana Emergency Response Commission
Indiana Government Center North, Rm 1255
100 North Senate Avenue
Indianapolis, Indiana 46207-7024

RE: Request for advisory opinion on various Open Door Law questions, No. 95-19.

Dear Mr. Carraway:

This is in response to your letter, dated January 25, 1995, to Attorney General Carter. You have asked how the Indiana Open Door Law, IC 5-14-1.5, *et seq.*, (hereinafter, "Open Door Law,") applies to the conduct of local emergency planning committees ("LEPCs,") and their subcommittees. Specifically, you have asked:

1. What constitutes a quorum or a minimum number of an LEPC's membership for it to legitimately conduct business?
2. Does the same quorum requirement apply to an LEPC's subcommittee meetings as to full LEPC meetings?

Melvin J. Carraway, Chair
February 21, 1995
Page 2

3. Does the same meeting notice requirement apply to LEPC subcommittee meetings as to full LEPC meetings?
4. May LEPC members designate proxies to attend and vote at LEPC meetings?
5. May LEPC subcommittee members designate proxies?

In order to respond to these questions, it is helpful to review the relevant statutes governing the LEPCs and their subcommittees. The Indiana Emergency Response Commission (IERC) was created by Public Law 87-1992, §6, which has been codified at IC 13-7-36, *et seq.* The duties of the IERC include assisting the state in complying with the Superfund Reauthorization Act of 1986 (SARA), IC 13-7-36-7(2).

Title III of SARA, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§11001, *et seq.*, requires the IERC to establish emergency planning districts and local emergency planning committees (LEPCs). 42 U.S.C. §§11001(b) and (c). The IERC has established ninety-two (92) committees, one in each county. The LEPCs are responsible for setting procedures for the receipt and processing of requests for information under 42 U.S.C. §11022.

Under SARA, the IERC is also required appoint the members of the various LEPCs. 42 U.S.C. §11001(c). The LEPCs must include representatives from the following groups or organizations:

- elected state and local officials,
- law enforcement,
- civil defense,
- firefighting,
- first aid,
- health,
- local environmental,
- hospital and transportation personnel,
- broadcast and print media,
- community groups, and
- owners and operators of facilities subject to SARA Title III.

42 U.S.C. §11001(c). The individual LEPCs are required to appoint a chairperson and "establish rules by which the committee shall function." *Id.* The rules of an LEPC must include meeting notification, public comment and response to comments by the LEPC and distribution of the district emergency plan. *Id.* No other direction is provided in SARA Title

Melvin J. Carraway, Chair
February 21, 1995
Page 3

III for the conduct of proceedings by LEPCs. Therefore, we must look to state law, specifically, the Open Door Law and Indiana case law for guidance in these areas.

QUESTION 1: What constitutes a quorum or minimum number of an LEPC's membership for it to legitimately conduct business?

QUESTION 2: Does the same quorum requirement apply to an LEPC's subcommittee meetings as to full LEPC meetings?

SARA Title III and the Open Door Law do not provide a quorum requirement for LEPCs or their subcommittees. We must rely upon relevant case law for direction on these questions.

The Indiana Supreme Court has defined a "quorum" to mean the "number of persons that are members of a body when assembled who are legally competent to transact business." *Davidson v. State* (1966), Ind., 221 N.E.2d 814, 814. In the absence of a specific constitutional or statutory description of a quorum for a particular body, a quorum is generally considered to be a majority of that body. *Id.*, at 814. A quorum for LEPCs and their subcommittees, therefore, is a majority of the committee membership.

QUESTION 3: Does the same meeting notice requirement apply to LEPC subcommittee meetings as to full LEPC meetings?

The meeting notice requirements for LEPCs are set out in the Open Door Law, an act which applies to all meetings of a governing body. IC 5-14-1.5-3(a). A "meeting" is defined as a gathering of a "majority of the governing body of public agency for the purpose of taking official action upon public business." IC 5-14-1.5-2(c).

While LEPCs are recognized as governing bodies under the Open Door Law, the question remains whether LEPC subcommittees are also governing bodies subject to the Law. A "governing body" is defined as two or more individuals who are a "committee appointed directly by the governing body" and "to which authority to take official action upon public business has been delegated." IC 5-14-1.5-2(b)(3). "Official action" includes receiving information, deliberating, making recommendations, establishing policy, making decisions, or taking final action by means of a vote of the governing body on any motion, resolution, proposal, rule, regulation, or order. IC 5-14-1.5-2(d) and (g).

Since subcommittees are appointed directly by the LEPC, these entities are governing bodies as defined at IC 5-14-1.5-2(b)(3). Therefore, any gathering of the majority of the subcommittee members for the purpose of taking official action, as defined above, is subject to

Melvin J. Carraway, Chair
February 21, 1995
Page 4

the meeting notice requirements and all other requirements of the Open Door Law. IC 5-14-1.5-2(c), (d) and (g).

QUESTION 4: May LEPC members designate proxies to attend and vote at LEPC meetings?

QUESTION 5: May LEPC subcommittee members designate proxies?

Again, SARA Title III and the Open Door Law do not address the use of "proxies" by LEPCs or their subcommittees. The Indiana Supreme Court addressed the issue of the use of proxies by administrative bodies in *Indiana Board of Public Welfare v. Tioga Pines* (1993), Ind., 622 N.E.2d 935, cert. den., 114 S.Ct. 1302 (1994). Generally, a "proxy is one who has the same authority to act and vote as does the member." *Id.*, at 943. The Court recognized in the *Tioga Pines* case that some state statutes sanction the use of proxies, while others forbid the use of proxies. See, for example, IC 3-6-4-6, State Election Board, and; IC 8-1-2.7-7, Local Water Corporations.

In the *Tioga Pines* case, the Indiana Supreme Court, in reviewing the use of written proxies by the Board of Public Welfare in the adoption of rules, recognized that the Board is composed of volunteer citizens and that difficulties in achieving a live quorum for the conduct of official business may be realized. However, the Board of Public Welfare did not clearly sanction the use of proxies by administrative bodies which lack statutory authority. The Indiana Supreme Court noted that

(c)learly, there is a preference implicit in the very concept of official government action of live personal participation by public officials. At the same time, the choice of procedural methods by agencies, *if not arbitrary or contrary to law* is entitled to judicial deference upon review . . . the departure here from the preference for live personal participation in official action by a quorum, *is an irregularity*, the harm of which . . . was healed by review rights and further action at federal levels.

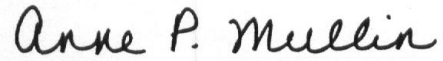
Tioga Pines, at 944. [Emphasis added.]

In the case of LEPCs and their subcommittees, as with the Board of Public Welfare in *Tioga Pines*, the enabling statute is silent as to the use of proxies. While the *Tioga Pines* case provides some rationale for the use of proxies by administrative bodies when no direct statutory authority has been provided, the use of proxies in such instances may subject the actions of the LEPCs and their subcommittees to challenge as a procedural irregularity. The better course, and our advice, in the absence of legislation which provides authority for the use of proxies, is for LEPCs and their subcommittees to refrain from the use of proxies.

Melvin J. Carraway, Chair
February 21, 1995
Page 5

We hope that these responses have adequately addressed your inquiries. If you have any questions, please feel free to contact me directly at 232-6356.

Sincerely,

A handwritten signature in cursive script that reads "Anne P. Mullin".

Anne P. Mullin
Deputy Attorney General

ss/24863

3.4 Appointment and Removal of LEPC Members

To: Deputy Attorney General

From: Indiana Emergency Response Commission, Vice-Chair

Subject: Appointing Authority of IERC

The IERC voted to request of your office an opinion regarding the legal authority of the IERC to appoint and remove members of Local Emergency Planning Committees (LEPCs).

Specifically, the IERC seeks clarification of whether it has the authority to actually appoint and remove LEPC members, or only to approve appointments and removals by the LEPCs themselves or by other local bodies.

A situation has arisen in which an Indiana citizen has been denied membership by an LEPC, and that citizen has appealed to the IERC for appointment to that LEPC, and we want to be clear on our legal authority in this regard before making a decision on the appellant's request.

Thank you in advance for your assistance in this important matter.

CC: Rose



RECEIVED

AUG 22 1994

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402 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

PAMELA CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

WRITER'S: _____

August 15, 1994

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VIA INTER-DEPARTMENTAL MAIL

Greta Hawvermale, Vice-Chair
Indiana Emergency Response Commission
Room 1255, Indiana Government Center North
100 N. Senate Avenue
Indianapolis, Indiana 46204

RE: Appointment of LEPC members, No. 94-216.

Dear Ms. Hawvermale:

This is in response to your request dated August 4, 1994. You have inquired whether the Indiana Emergency Response Commission ("IERC") has the authority to appoint and remove Local Emergency Planning Committee ("LEPC") members or whether the IERC is merely to approve appointments and removals made by a LEPC or other local bodies. For the reasons cited below, the authority to make appointments and to remove LEPC members lies with the IERC, not with a LEPC or any other local body.

The enabling act for the IERC, Indiana Code 13-7-36, *et seq.*, requires the IERC to assist the state in complying with the requirements of the federal Superfund Amendments and

Greta Hawvermale
August 15, 1994
Page Two

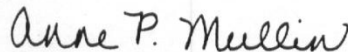
Reauthorization Act of 1986, "SARA". I.C. 13-7-36-7(2). Title III of SARA provides that a state emergency response commission "shall appoint members of a local emergency planning committee [LEPC] for each emergency planning district." 42 U.S.C. 11001(c). The IERC is the body authorized to make appointments to the LEPCs.

In addition, Title III of SARA permits the IERC to "revise" its appointments to LEPCs and interested persons may petition the IERC to "modify" the membership of an LEPC pursuant to 42 U.S.C. 11001(d). The language of the enabling act references revisions and modifications to LEPC memberships, rather than "removal" and there has not yet been a interpretation of these terms by the courts. Words and phrases shall be taken in their plain and ordinary sense unless to do so would defeat the intent of the legislative body enacting the statute. *Negenscott v. Samuels*, 113 S.Ct. 1119, 1122-23 (1993). The plain and ordinary meanings of these terms are broader in scope than "removal" and either may include the removal of members from the LEPC.¹ Therefore, the IERC is the body authorized by statute to revise or otherwise make changes in the appointments to LEPCs, which may include the removal of members.

As a practical matter, the IERC may need assistance in identifying persons for appointments in the various emergency planning districts. There is no prohibition in the statutes governing the IERC and LEPCs which would prevent the IERC from taking recommendations from the LEPCs and other local bodies. However, the authority to appoint and revise the appointments to LEPCs remains solely with the IERC.

If you have any questions, or if we can be of further assistance, please do not hesitate to contact me at 232-6356.

Sincerely,



Anne P. Mullin
Deputy Attorney General

4352-1

¹ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (6th Edition, 1986), Pages 1944,1452, defines "revise" as "to make a new, amended, approved or improved or up-to-date version" and "modify" as "to make minor changes in the form or structure of."

3.5 Service on More than One LEPC

TO: Attorney General , Deputy

FROM: Indiana Emergency Response Commission, Vice-Chair

SUBJECT: County Commissioner Eligibility for LEPC Membership

At its July 11, 1994 meeting, the IERC voted to request of your office an opinion regarding the eligibility of a County Commissioner of one county to serve on the LEPC of another county.

A member of the IERC is aware of an impending situation answering the description above, i.e., a sitting county commissioner in one county is seeking membership on the LEPC of another county.

Thank you in advance for your assistance.



SEP 15 11 14 AM '94

STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
402 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

PAMELA CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

WRITER'S: _____

September 10, 1994

NOT AN OFFICIAL OPINION
VIA INTER-DEPARTMENTAL MAIL

Ms. Greta Hawvermale, Vice-Chair
Indiana Emergency Response Commission
100 N. Senate Avenue
P.O. Box 7024
Indianapolis, IN 46207-7024

RE: Request for advisory opinion, No. 94-233

Dear Ms. Hawvermale:

In your letter of August 15, you requested the opinion of this office as to whether a county commissioner of one county can serve on the LEPC of another. For the reasons discussed below, a commissioner of one county may serve on the LEPC of another county.

ANALYSIS

The primary sources of law governing the holding of public office are the Indiana Constitution, Indiana statutory law, local county ordinance and common law. Absent a proscription in one of these authorities, dual office holding is permissible.

I. Constitutional Considerations

Generally, dual office-holding raises the following two issues under the Indiana Constitution:

1. Does the situation violate the Indiana constitutional prohibition against the holding of two lucrative offices (Ind. Const. Art 2, §9)? ; and

2. Does the situation violate the Indiana constitutional mandate of the separation of powers (Ind. Const. Art. 3, §1)?

A. The dual office holding will not violate Article 2, Section 9 of the Indiana Constitution.

Article 2, Section 9 of the Indiana Constitution provides:

No person holding a lucrative office or appointment under the United States or under this State is eligible to a seat in the General Assembly; and no person may hold more than one lucrative office at the same time; except as expressly permitted in this Constitution. Offices in the militia to which there is attached no annual salary shall not be deemed lucrative.

(Emphasis added.) For purposes of this provision, a "lucrative office" means "an office to which there is attached a compensation for services rendered." Gaskin v. Beier (1993) Ind. App., 622 N.E.2d 524, citing Book v. State Office Bldg. (1958), 238 Ind. 120, 149 N.E.2d 273. Thus, dual office-holding will only violate Article 2, Section 9 if both positions are "offices" to which compensation is attached.

In determining whether a position may be properly characterized as an "office" for purposes of an Art. 2, §9 analysis, Indiana courts have used the following definition:

An office, as opposed to an employment, is a position for which the duties include the performance of some sovereign power for the public's benefit, are continuing, and are created by law instead of contract. Generally, one who holds an elective or appointive position for which public duties are prescribed by law is a "public officer." ... An officer is also distinguished by his power of supervision and control and by his ability to called to account as a public offender in case of malfeasance in office.

Gaskin v. Beier, supra, quoting Mosby v. Bd. of Com'rs of Vanderberg County (1962), 134 Ind.App. 175, 186 N.E.2d 18; See also Pike County v. State ex rel. Hardin (1984) Ind.App., 469 N.E.2d 1188.

The position of county commissioner qualifies as a "lucrative public office" under the Constitution. See IC 36-2-2-1, et seq. Likewise, membership on a LEPC will likely also be deemed to be an "office" as it is an appointed position

which is created by statute and which entails the performance of a sovereign function for the benefit of the public. Thus, the simultaneous holding of the positions of county commissioner and LEPC member will be prohibited if compensation is attached to the latter.

Nothing in IC 6-6-10 or 42 USC §11000, *et seq.*, provides for the compensation of LEPC members. Absent some attendant compensation, LEPC membership is not a "lucrative office." Gaskin v. Beier, *supra*. Consequently, Article 2, Section 9 does not prohibit a county commissioner in one county from becoming a LEPC member in another.

B. The dual office-holding is not prohibited by Article 3, Section 1 of the Indiana Constitution.

Article 3, Section 1 of the Indiana Constitution concerns the separation of powers and states:

The powers of the Government are divided into three separate departments; the Legislative, the Executive including the administrative, and the Judicial: and no person, charged with official duties under one of these departments, shall exercise any of the functions of the other, except as in this Constitution expressly provided.

This provision is generally given a strict interpretation. Rush v. Carter (1984) Ind.App., 468 N.E.2d 236. The object of this provision is to keep the three branches of government separate by prohibiting any one person from wielding the powers of more than one branch. See Rush v. Carter, *supra*.

Pursuant to IC 36-2-2-2, the county commissioners clearly fall within the executive branch of the government. LEPCs are also properly characterized as executive in nature since their members are appointed by the IERC (who are in turn appointed by the Governor) for the purpose of implementing a federal law. Consequently, Article 3, Section 1 does not prohibit an individual from simultaneously serving as a county commissioner and a LEPC member.

II. Dual office-holding may violate a local ordinance.

Research has failed to yield any statutory prohibition against simultaneously serving as a county commissioner in one county and a LEPC member in another. However, it is possible that the counties involved have ordinances proscribing such a practice. It is therefore recommended that the local county attorneys be consulted regarding the possible existence of such

an ordinance.

III. Dual office-holding does not violate the common law prohibition against the simultaneous holding of incompatible offices.

Indiana's common law, like that of most other jurisdictions, expressly prohibits the simultaneous occupation of incompatible offices. Bishop v. State ex rel. Griner (1898) 149 Ind. 223, 48 N.E. 1038; Hiday v. State ex rel. Snider (1927) 64 Ind.App. 159, 115 N.E. 601; Thomas v. Dremmel (1994) Wyo., 868 P.2d 263; Acevedo v. City of North Pole (1983) Alaska, 672 P.2d 130; Otradovec v. City of Green Bay (1984) Wis.App., 347 N.W.2d 614; Scannapieco v. Abate (1992) 258 N.J.Super 506, 610 A.2d 432; Rose v. Wellsville (1993) Ohio Com. pl., 613 N.E.2d 262; Shepard v. Platt (1993) 177 Ariz. 63, 865 P.2d 107; See also 63A AmJur2d *Public Officers and Employees* §§ 64-86 (2nd Ed. 1984). This doctrine prohibits dual office-holding under several circumstances including where:

1. the offices in question have inherently inconsistent functions and/or duties;
2. public policy considerations make it improper for one person to hold the offices; and
3. governmental checks and balances might be eliminated.

See 63A AmJur2d, supra, at §§ 64-86; Town of Littleton v. Taylor (1994) N.H., 640 A.2d 780. The general purpose behind this doctrine is to ensure that public officers discharge their duties with undivided loyalty. See 63A AmJur2d, supra, at § 78; Acevedo, supra; Scannapieco, supra.

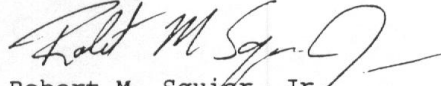
The simultaneous occupation of the offices of commissioner and LEPC member does not appear to violate the common law prohibition as the offices have no conflicting duties or functions. Generally, where two offices operate in different spheres so that one is not subordinate to the other or subject to its supervision or control, no common law incompatibility exists. 63A AmJur2d, supra, at § 64. Here, neither office is subordinate to the other. Therefore, so long as the individual is able to faithfully discharge the duties of the two offices, the common law doctrine will not be violated.

CONCLUSION

In view of the foregoing, an individual may serve as a county commissioner in one county and as a LEPC member in another so long as he or she can faithfully and efficiently execute the duties of both offices.

I hope this response has adequately addressed your inquiry.
Please contact me at 232-6210 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert M. Squier, Jr.", with a stylized flourish at the end.

Robert M. Squier, Jr.
Deputy Attorney General

3.6 Diversion of LEPC Funds or Equipment

TO: Deputy Attorney General

FROM: Indiana Emergency Response Commission, Vice-Chair

SUBJECT: Ownership and Control of Equipment Purchased by LEPCs with Funds Provided
by IC 6-6-10

The IERC voted to request of your office an opinion regarding the ownership and/or control of equipment purchased by Indiana's LEPCs with funds provided them under IC 6-6-10.

A key provision of IC 6-6-10 is that the fund is to be administered by the county executive. Does this bear on the question of whether LEPCs, as agencies of the state of Indiana, own and/or control, the equipment they purchase? Could, for example, a county's executive legitimately divert LEPC-purchased equipment to a county agency which it perceived needed that equipment more than the LEPC?

Thank you in advance for your assistance with this important question.



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
402 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

PAMELA CARTER
ATTORNEY GENERAL

SEP 15 11 14 AM
DEPARTMENT
OF
ENVIRONMENTAL
MANAGEMENT
TELEPHONE (317) 232-6201

WRITER'S: _____

September 10, 1994

NOT AN OFFICIAL OPINION
VIA INTER-DEPARTMENTAL MAIL

Ms. Greta Hawvermale, Vice-Chair
Indiana Emergency Response Commission
100 N. Senate Avenue
P.O. Box 7024
Indianapolis, IN 46207-7024

RE: Request for advisory opinion, No. 94-234

Dear Ms. Hawvermale:

In your letter of August 12, you requested the opinion of this office as to whether a county could divert equipment purchased for a LEPC with funds provided under IC 6-6-10-1, *et seq.* For the reasons discussed below, counties may not divert funds or equipment purchased with funds provided by IC 6-6-10-1, *et seq.*

ANALYSIS

IC 6-6-10 establishes and governs the administration of the Local Emergency Planning and Right to Know Fund (hereinafter "Fund"). The statutory purpose of the Fund is to aid each county in the implementation of Title III of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"). IC 6-6-10-5. Under the provisions of this statute, the Indiana Department of Revenue collects a fee from each facility which must file an emergency and hazardous chemical inventory form. IC 6-6-10-6. The revenue generated by these fees, along with the attendant accrued interest and other investment earnings, comprise the Fund. IC 6-6-10-5. The Fund is then distributed among the counties who are required to keep their allotted share separate and apart from other county funds. IC 6-6-10-7(b). The Fund is administered by the county executive on behalf of the LEPC. IC 6-6-10-7(c).

Although the county executive is statutorily required to administer the Fund, the Act neither gives money to the county nor does it grant the executive unfettered discretion in the use of the funds or equipment purchased with the Fund. On the contrary, the General Assembly has explicitly required the counties to keep the Fund separate and apart from other county monies and has expressly delineated the purposes for which the fund may be used. The Fund may be used for:

1. preparing and updating a comprehensive emergency response plan required under 42 U.S.C. 11003 for the county or emergency planning district;
2. establishing and implementing procedures for receiving and processing requests from the public for information about hazardous chemicals under Title III of SARA; and
3. training for emergency response planning, information management, and hazardous materials incident response.

IC 6-6-10-7(b). These factors clearly indicate that the General Assembly did not intend to give the Fund to the counties but, rather, intended for the counties to act as a trustee of sorts on behalf of the LEPCs. This conclusion is bolstered by the simple, legal interpretation of the statute.

It is a cardinal rule of statutory construction that when the General Assembly lists certain items or terms, other such items or terms not so listed are excluded by implication. City of Peru v. Utility Service Bd. of City of Peru (1987) Ind.App., 507 N.E.2d 988; In re Wardship of Turrin (1982), Ind.App., 436 N.E.2d 130. Here, the General Assembly has clearly delineated three purposes for which the Fund may be used. Thus, all other uses of the fund are precluded by implication - including the diversion of equipment purchased with the Fund. City of Peru, et al, supra.

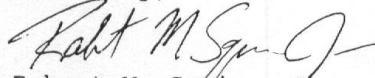
Another rule of construction supporting this conclusion is the presumption that the General Assembly does not enact provisions that are a nullity, easily circumvented, or inconsistent with its underlying goals. State ex rel. Hatcher v. Lake Superior Court, Room Three (1986) Ind., 500 N.E.2d 737; Indiana State Bd. of Health v. Journal-Gazette Co (1993) Ind.App., 608 N.E.2d 989, as corrected on rehearing in part, opinion adopted 619 N.E.2d 273; Simon v. City of Auburn, Ind., Bd. of Zoning Appeals (1988) Ind.App., 519 N.E.2d 205. Allowing the county executive to divert equipment and supplies purchased with the Fund would not only interfere with the explicit intent of the statute to implement SARA but would also arguably eviscerate the

statutory limitations on the uses of the Fund. Since this is a result which the General Assembly is presumed not to have intended, it follows that the county commissioners may not divert equipment or supplies from LEPCs.

The foregoing reasons, taken individually and together, clearly mandate that the Fund only be used for the purposes listed under IC 6-6-10-7(b). A county is prohibited from diverting those monies or equipment purchased therewith for other purposes.

I hope this response has adequately addressed your inquiry. Please contact me if you have any questions.

Sincerely,



Robert M. Squier, Jr.
Deputy Attorney General

Representation of LEPCs by Attorney General



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
402 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770

JEFFREY A. MODISETT
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

February 9, 1998

William C. Nicholson, General Counsel
State Emergency Management Agency
Department of Fire and Building Services
Public Safety Training Institute
Indiana Government Center South
302 West Washington Street, Room E208
Indianapolis, IN 46204

**RE: *Request for Assistance in Procuring Release of
Funds Wrongly Withheld by Morgan County Council***

Dear Mr. Nicholson:

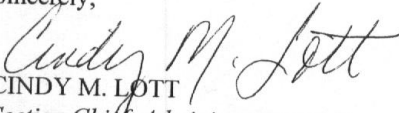
I am pleased to report to you that, in response to your agency's request for representation dated January 2, 1998, the Attorney General's office will be able to provide representation to the Morgan County Local Emergency Planning Committee ("LEPC") through its request to the Indiana Emergency Response Commission ("IERC").

After review of the relevant statutes, recent caselaw as to the characteristics of state agencies and entities, and materials provided by your agency, the Attorney General's office has determined that the LEPC is an entity that is sufficiently controlled and funded by the State such that it may be represented by the Attorney General's office. Thank you for your patience as this office gave your request thoughtful consideration.

William C. Nicholson, General Counsel
February 9, 1998
Page Two

I have assigned this case to Stephanie Roth, a Deputy Attorney General in the Administrative and Regulatory Section. As the DAG assigned to the case, Ms. Roth will contact you; she will need to learn the names of local contacts in Morgan County with whom she should speak. Should you have any questions regarding this matter, please do not hesitate to call Ms. Roth at 233-6142 or me at 232-0080.

Sincerely,


CINDY M. LOTT
*Section Chief, Administrative and
Regulatory Section, Governmental
Litigation Division*

CML:dan

cc: Stephanie Roth, Deputy Attorney General
[180360]

Section 4

Document

Forms and

Templates

4.6(a) LEPC Letter to County Officials

www.in.gov/dhs/files/LEPC_Letter_to_County_Officials.pdf

(INSERT COUNTY NAME) COUNTY LOCAL EMERGENCY PLANNING COMMITTEE
(INSERT ADDRESS)
(INSERT PHONE NUMBER) (INSERT FAX NUMBER)
(INSERT DATE)
(AUDITOR, PRESIDENT OF COUNTY COMMISSION, AND COUNTY COUNCIL)

DEAR (INSERT NAME)

Enclosed for your information is a copy of IC 6-6-10, the statute providing for the funding of Indiana's Local Emergency Planning Committees (LEPCs). Appointed, supervised and coordinated by the Indiana Emergency Response commission (IERC), a state board appointed by the Governor, the LEPCs are state agencies. As such, they are subject to the Indiana Open Door Law, Indiana Public Records Act, Indiana Administrative Orders and Procedures Act, and the Indiana Tort Claims Act. The state funding provided annually to the LEPCs by the IERC may be used only for certain specified purposes set out in the funding statute, and each LEPC must provide to the IERC an annual accounting of its expenditures for one or more of those purposes.

The allowable LEPC expenditures are limited to planning, training, data management, administrative communication equipment, emergency response equipment (for hazmat teams providing at least county-wide response), and the payment of a meeting stipend to eligible LEPC members.

An LEPC is further limited to planning and data management expenditures unless it has submitted to the IERC a chemical emergency response plan that meets the requirements of 42 USC 11003 (a), and has "received approval for the training programs from the emergency response commission." Sections IB (d) and (e) of IC 6-6-10 provide the following:
"(d) Money shall be appropriated by a county fiscal body (as defined in IC 36-1-2-6) from a fund established under subsection (b) upon the receipt by the county fiscal body of the local emergency planning committee's spending plan. The spending must:

- (1) have been approved by a majority of the members of the local emergency planning committee; and
- (2) conform with the provisions of this chapter. The county fiscal body may not appropriate money from the fund established under subsection (b) for any person or purpose other than the local emergency planning committee.
- (e) All equipment, apparatus, and supplies purchased with money from a fund established under subsection (b) remains under the direction and control of the local emergency planning committee."

I hope this summary of the LEPC funding statute is helpful.

I have sent to the county attorney a copy of the Indiana Attorney General's Administrative Advisory Letter of June 7, 1988, which addresses the legal status and liability of LEPC and IERC members, as well as a copy of IC 6-6-10:

If you have any questions regarding the LEPC's legal status, its funding, or its responsibilities, please let me know.

Sincerely yours,
IERC Chair
cc: County Attorney

4.6(b) LEPC Planning information request to Facilities

www.in.gov/dhs/files/LEPC_Planning_information_request_to_Facilities.pdf

(INSERT COUNTY) LOCAL EMERGENCY PLANNING COMMITTEE

(INSERT ADDRESS)

(INSERT DATE)

(INSERT FACILITY EMERGENCY COORDINATOR)

(INSERT FACILITY NAME)

(INSERT ADDRESS)

DEAR (INSERT NAME)

Pursuant to its legal obligation to upgrade its chemical emergency response plan in [Insert date], the (INSERT COUNTY NAME) County Local Emergency Planning Committee (LEPC) needs information in addition to what you have provided the LEPC to date.

Specifically, the following planning information is required by federal and state law, and has not yet been provided by your facility:

Identification of routes by which extremely hazardous substances (EHS) are transported into your facility (including frequency and size of shipments);

Methods in place at your facility for determining the occurrence of an EHS or CERCLA chemical release;

Methods and procedures to be followed by your facility to respond to releases by your facility of EHS or CERCLA chemicals;

Procedures/protocols in place at your facility to provide local authorities timely notification that an EHS or CERCLA chemical release has occurred;

A description of your facility's emergency equipment and personnel available to deal with an EHS/CERCLA release from your facility;

The largest site container of each EHS present at your facility;

The name, address, and telephone number of an alternate FEC to contact in your absence

Section 303 (a) of US Code 11003, a copy of which is enclosed, requires the information cited above, for the protection of the EHS facility, emergency responders, and the public in proximity to the facility.

42 USC 11003 SEC. 303. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) Plan Required.-Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources.-Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required, and the means for providing such additional resources.

(c) Plan Provisions. -Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to the requirements of this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

Your facility and the (INSERT COUNTY NAME) County LEPC are both subject to legal sanctions for failure to provide and integrate, respectively, the above information for the LEPC's chemical emergency response plan.

Please provide the information above at your earliest opportunity, but by no later than (3 weeks from the date of this letter). If your company has more than one EHS facility in (INSERT COUNTY NAME), please be sure to provide the information that applies to each of them.

Thank you for your prompt cooperation with our legally required collection and incorporation of this information in our emergency plan. If you have any questions, please contact me at (INSERT PHONE NUMBER).

Sincerely yours,

(INSERT NAME AND TITLE)

(INSERT COUNTY NAME), LEPC

Enclosure

4.6(c) IERC Planning Information Compliance Letter to Facilities

www.in.gov/dhs/files/IERC_Planning_Information_Compliance_Letter_to_Facilities.pdf

Date
Facility Emergency Coordinator
Extremely Hazardous Substance Facility
Street Address
City

Dear FEC:

It has come to the attention of the Indiana Emergency Response Commission (IERC) that you have not provided the information requested of you by the _____ Local Emergency Planning Committee (LEPC) pursuant to its meeting its responsibilities under 42 USC 42 11003, Section 303, Comprehensive Emergency Response Plans.

It is essential that you comply with the _____ LEPC's request for emergency planning information within three weeks of the date of this letter. Should you fail to respond within the allotted time, the IERC will forward your company's name to the United States Environmental Protection Agency (USEPA) Region 5 for enforcement action.

This matter requires your immediate attention, as USEPA is empowered by law to levy fines of up to \$27,500 per day for each violation of 42 USC 11003.

Sincerely yours,

IERC Chairman
Indiana Emergency Response Commission

4.6(d) LEPC Compliance Letter to Facilities

www.in.gov/dhs/files/LEPC_Compliance_Letter_to_Facilities.pdf

CERTIFIED MAIL

RE: Compliance with SARA Title III Reporting Requirements

To Whom It May Concern,

It has come to the attention of the _____ County Emergency Planning Committee (LEPC) that your facility may be required to report under the Emergency Planning and Community Right-to-Know Act of 1986, also known as SARA Title III, for 20__, 20__ and 20__.

Please review the enclosed information packet which describes in detail the reporting requirements and which includes reporting forms.

In brief, a facility storing Extremely Hazardous Substances in quantities of 1-500 lbs. or more, or storing chemicals covered under the Occupational Safety and Health's (OSHA) Hazard Communication Standard in quantities of 10,000 lbs. or more must file reports with the Indiana Emergency Response Commission (IERC), the Local Emergency Planning Committee and your local fire department.

Your facility appears to be subject to one or more of the law's reporting requirements described below:

1. Notification that your facility produces, uses, or stores an extremely hazardous substance (EHS) as required by SARA Title III, section 302.
2. Notification to the IERC, LEPC, and your local fire department, is required under SARA Title III, Section 304, if your facility experiences an accidental release of an EHS or CERCLA chemical at or above their Reportable Quantities.
3. A submission of Material Safety Data Sheets (MSDS) or a list of hazardous chemicals as required by SARA Title III, Section 311.
4. A submission of Emergency and Hazardous Chemical Inventory forms as required by SARA Title III, Section 312, each March 1st, beginning March 1, 1987.
5. Indiana facilities subject to the Section 312 reporting requirements are also required to pay a filing fee to the Indiana Department of Revenue.
6. If yours is a manufacturing facility, you may have additional reporting obligations under SARA Title III, Section 313, which deals with routine Chemical emissions in the manufacturing process.

Within fifteen (15) days of receipt of this letter, please provide to the agencies listed below the appropriate reporting forms. If you do not believe you are required to report under SARA Title III, please submit to this committee within the same period a written statement to that effect.

Indiana Emergency Response Commission (IERC)
302 West Washington Street, Room E-208
Indianapolis, Indiana 46204-2760

(NAME & LEPC ADDRESS)

Fire Dept

Address

City, *State* *Zip*

We urge your immediate attention to this matter, as the law does provide for fines up to \$27,500 per day per violation by the United States Environmental Protection Agency when non compliance is brought to their attention.

Sincerely yours,

_____ County Local Emergency Planning Committee

4.6(e) IERC Compliance Letter to Facilities

www.in.gov/dhs/files/IERC_Compliance_Letter_to_Facilities.pdf

Date

Name and address of facility

Dear

I am writing to follow up on a letter which was recently sent to you by the _____ County Emergency Planning Committee (LEPC). The LEPC has informed the Indiana Emergency Response Commission (IERC) that your company has not responded to their requests for information regarding your SARA Title III filing status.

Please review the SARA Title III reporting requirements as they apply to your facility. Within fifteen (15) days of receipt of this letter, kindly provide to this Committee, to your local emergency planning committee, and to your local fire department either:

- a. the required Title III filing information; or
- b. written statement on your company letter head to the same three agencies that you are not subject to the law's reporting requirements.

Should you fail to respond within the allotted time, the IERC will forward your company's name to Region 5 United States Environmental Protection agency (USEPA) for investigation.

If your company is determined to be out of compliance with SARA Title III provisions USEPA is authorized to levy fines of \$27,500 per day for each violation of those provisions.

I urge your prompt compliance.

Sincerely yours,

Indiana Emergency Response Commission

4.7 Uniform Conflict of Interest Disclosure Statement

www.in.gov/sboa/files/Form236.pdf

Indiana Code 35-44-1-3

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or in is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant; or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-3-4-1) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from IC 35-44-1-3. Care should be taken to review IC 35-44-1-3 in its entirety.

Name and Address of Public Servant Submitting

Statement: _____

Title or Position with Governmental

Entity: _____

a. Governmental

Entity: _____

b. County: _____

This statement is submitted (check one):

_____ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

_____ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

5. Name (s) of Contractor (a) or vendor (e):

6. Description(s) of Contract(s) or Purchase(s) (Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is elected above. If "dependent" is involved, provide dependent's name and relationship):

7. Description of My Financial Interest (Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):

(Attach extra pages if additional space is needed)

8. Approval of Appointing officer or Body (To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university):
I (We) being the

_____ of
(Title of Officer or Name of Governing Body)

_____ and having the power to
appoint

(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in IC 35-44-1-3; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

Elected Official

Office

9. Effective Dates (Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):

_____ Date Submitted

_____ Date of Action on Contract or Purchase

10. Affirmation of Public Servant: This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting to the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____
(signature of Public Servant)

Date: _____

Within 15 days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2738 and the Clerk of the Circuit Court of the county in which the governmental entity executed the contract or purchase. A copy of this disclosure will be forwarded to the Indiana State Ethics Commission.

4.8 Hazmat Equipment Grant Agreement (form Agreement)

www.in.gov/dhs/files/hazmat_equipment_grant_agreement_Form.pdf

FORM HAZMAT EQUIPMENT GRANT AGREEMENT

Whereas The Indiana General Assembly, in IC 6-6-10-5, Has established the Local Emergency Planning and Right-to-know Fund (the "Fund"), for the purpose of providing each county in the State of Indiana, including _____ county, with funds to help implement Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 11001 et. seq, ("SARA")

Whereas The monies contained in the fund shall be distributed in the manner specified in IC 6-6-10-7(a). Those funds distributed to _____ county have been deposited in a separate fund established by _____ county, as specified by IC 6-6-10-7(b).

Whereas The monies contained in _____ county's separate fund may only be appropriated for specific purposes, among which is equipping a hazardous materials response team ("HAZMAT Team").

Whereas The _____ county Local Emergency Planning Committee ("LEPC") has provided the county fiscal body with a Spending Plan, pursuant to IC 6-6-10-7(d), which requests appropriation of monies specifically for emergency response equipment.

Whereas The _____ HAZMAT Team, as required by IC 6-6-10-7(b)(4), provides county-wide emergency planning response, and the response team members have current training levels which are consistent with the equipment which the grant will provide.

NOW, THEREFORE, the parties hereby agree as follows:

1. The _____ county LEPC, although it will retain direction and control over the equipment for purposes of assuring continuing compliance with IC 6-6-10-7(b)(4), recommends to the county fiscal body that the HAZMAT Team receives assistance in the form of a grant.
2. The _____ HAZMAT Team agrees to spend the monies granted to it in the manner specified by the _____ county LEPC Spending Plan, and further agrees to assume daily operational direction and control over the equipment, including inspection, maintenance and upkeep.
3. Upon the recommendation of the _____ county LEPC, as contained in the LEPC Spending Plan, The fiscal body of _____ county hereby grants to the _____ HAZMAT Team the following funds, to be utilized for the following purposes:

FUNDS	PURPOSE
_____	_____
_____	_____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

4. The parties believe and represent to be the truth from their own knowledge that the _____ HAZMAT Team, as required by IC 6-6-10-7(b)(4), provides county-wide emergency planning response, and the response team members have current training levels with are consistent with the equipment which the grant will provide.

_____	_____
President, _____ county Fiscal Body	Date

_____	_____
Chair, _____ county LEPC	Date

_____	_____
Leader, _____ HAZMAT Team	Date

4.9 Other Equipment Agreement

HAZARDOUS MATERIAL RESPONSE EQUIPMENT INFORMATION DOCUMENT
www.in.gov/dhs/files/Hazardous_Material_Response_Equipment_Information_Document.pdf
(Copy to the Indiana Emergency Response Commission)

_____ County LEPC

1. An intra-local agreement exists and is on file with the LEPC which allows the requesting hazardous materials team to provide district wide emergency planning response:

Yes _____ No _____

2. The following hazardous materials team is making a request for LEPC funds in the form of a grant to purchase equipment/supplies for emergency response.

Name of the Hazardous Materials Team

Address

Contact Person

Telephone

Email

3. Highest level of training of team members consistent with equipment requested:

- a. Awareness: _____
- b. Operational: _____
- c. Technical: _____
- d. Technical: _____
- e. Specialist: _____

LEPC Chairman

Date

Hazardous Material Team Representative

Date

IERC HANDBOOK
COMMENTS / REQUEST FOR CLARIFICATION FORM
www.in.gov/dhs/files/clarificaion_request_and_comment_form-handbook.pdf

The information in this handbook is intended to provide collaboration, communication and cooperation among LEPCs, the IERC and the public while implementing the statutory requirements of EPCRA.

Please use this form to offer comments and suggestions and to request clarification for any part of this handbook. The IERC will review all comments/requests and provide timely responses. All comments/suggestions adopted by the IERC will be included in the **annual** update/publication of the handbook.

Use this form to provide all comments, suggestions and clarification requests. Send the form by mail or email to the attention of the IERC Representative at the address or email address posted on page 1.

County: _____ Date: _____

Contact Person: _____

Address: _____

Phone: _____ Email: _____

Comments (please check all that apply):

☐ Editorial changes: _____

☐ Suggestions: _____

☐ Additional Comments: _____

Clarification Requested: _____

